

Jane Davis #1
sworn June 18, 2008

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

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, R.S.B.C. 2002, c. 57

AND

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

PETITIONERS

AFFIDAVIT

I, Jane Davis, Legal Secretary, of Alexander Holburn Beaudin & Lang LLP,
2700 – 700 West Georgia Street, Vancouver, British Columbia, MAKE OATH AND SAY:

1. I am a Legal Secretary with the law firm of Alexander Holburn Beaudin & Lang LLP, counsel for Ivanhoe Cambridge Inc., 20 VIC Management Inc., OMERS Realty Management Corporation and Morguard Investments Limited, and have personal knowledge of the facts and matters hereinafter deposed to save and except where stated to be based on information and belief and whereso stated I verily believe the same to be true.

2. Attached and marked as **Exhibit "A"** to this my affidavit is a letter from Sharon Urquhart of our office to Magnus Verbrugge of Borden Ladner Gervais LLP, counsel for the Petitioners dated June 11, 2008.

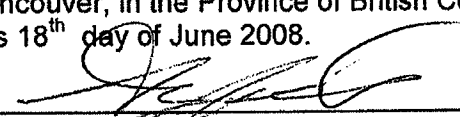
3. Attached and marked as **Exhibit "B"** to this my affidavit is a letter from Magnus Verbrugge to Sharon Urquhart dated June 12, 2008.

4. Attached and marked as **Exhibit "C"** to this my affidavit is a letter from Sharon Urquhart to Kibben Jackson of Fasken Martineau DuMoulin LLP, counsel for the Monitor, Deloitte & Touche Inc. dated June 12, 2008.

5. Attached and marked as **Exhibit "D"** to this my affidavit is a letter from Kibben Jackson to Sharon Urquhart dated June 13, 2008.

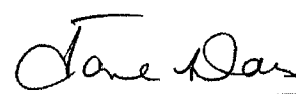
6. Attached and marked as **Exhibit "E"** to this my affidavit is a letter from Leslie Fluxgold of Fluxgold Izsak Jaeger LLP, Ontario counsel for 656750 Ontario Limited, the assignee of the Lease, dated June 16, 2008, with an attached copy of the Assignment of Lease.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 18th day of June 2008.


A Commissioner for taking Affidavits within British Columbia.

Name:

SHARON M. URQUHART
Barrister & Solicitor
ALEXANDER HOLBURN BEAUDIN & LANG LLP
2700 - 700 WEST GEORGIA ST.
VANCOUVER, B.C. V7Y 1B8



JANE DAVIS

ALEXANDER
HOLBURN BEAUDIN
& LANG LLP

Barristers & Solicitors • Trade-mark Agents

2700-700 West Georgia Street, Vancouver, BC, Canada V7Y 1B8 Tel: 604-484-1700 Fax: 604-484-9700 www.ahbl.ca

June 11, 2008

VIA E-MAIL

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

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

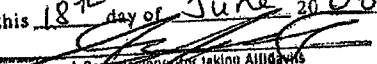
Per: 

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

This is Exhibit "A" referred to in
the affidavit of JANE DAVIS
sworn before me at the City of VANCOUVER
this 18th day of June 2008

A Commissioner for taking Affidavits
in and for the Province of British Columbia

1219658_1.DOC

Hong Kong Affiliate: Ong & Chung



BORDEN
LADNER
GERVAIS

This is Exhibit " B " referred to in
the affidavit of JANE QANS
sworn before me at the City of Vancouver
this 18th day of June 2008
[Signature]
A Commissioner for Taking Affidavits
in and for the Province of British Columbia

Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
1200 Waterfront Centre
200 Burrard Street, P.O. Box 48600
Vancouver, B.C., Canada V7X 1T2
tel: (604) 687-5744 fax: (604) 687-1415
www.blgcanada.com

June 12, 2008

FILE NO: 503148/000092

BY EMAIL

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

WATERLOO REGION • VANCOUVER • TORONTO • OTTAWA • MONTREAL • CALGARY

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
Wendy Petersmayer, Department of Justice
Jane Milton, Bull, Housser & Tupper LLP

ALEXANDER
HOLBURN BEAUDIN
& LANG LLP

Barristers & Solicitors - Trade-mark Agents

4

2700-700 West Georgia Street, Vancouver, BC, Canada V7Y 1B8 Tel: 604-484-1700 Fax: 604-484-9700 www.ahbl.ca

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

This is Exhibit " C " referred to in
the affidavit of JANE DAVIS
sworn before me at the City of VANCOUVER
this 18th day of June 20 08

A Commissioner for taking Affidavits
in and for the Province of British Columbia

Fasken Martineau DuMoulin LLP *
Barristers and Solicitors
Patent and Trade-mark Agents

2600 - 550 Burrard Street
Vancouver, British Columbia, Canada V6C 0A3

604 631 3131 Telephone
604 631 3232 Facsimile

www.fasken.com



Kibben Jackson
Direct 604 631 4786
Facsimile 604 632 4786
kjackson@fasken.com

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 "CCA 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

This is Exhibit " D " referred to in
the affidavit of JANE DAVIS
sworn before me at the City of VANCOUVER
this 18th day of June 2008.
[Signature]
A Commissioner for taking Affidavits
in and for the Province of British Columbia

DM_VAN/242587-00094/6872120.1

* Fasken Martineau DuMoulin LLP is a limited liability partnership and includes law corporations.

Vancouver Calgary Toronto Ottawa Montréal Québec City London Johannesburg

6



Page 2

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

DM_VAN/242587-00094/6872120.1

06/16/08 MON 10:54 [TX/RX NO 8142]

FLUXGOLD IZSAK JAEGER LLP
BARRISTERS & SOLICITORS


100 York Blvd., Suite 220
Richmond Hill, ON L4B 1J8
Tel: 905-763-3770
Fax: 905-763-3772

Reply To: Leslie A. Fluxgold
Extension: 210
E-mail: lfluxgold@fijlaw.com
Website: www.fijlaw.com

SENT BY REGISTERED MAIL

June 16, 2008

Deerfoot Mall (Calgary) Ltd.
95 Wellington Street West
Suite 300
Toronto, Ontario
M5J 2R2

This is Exhibit " E " referred to in
the affidavit of JANE DAVIS
sworn before me at the City of VANCOUVER
this 18th day of June 20 08

A Commissioner for Taking Affidavits
in and for the Province of British Columbia

Dear Sir,

RE: Assignment of lease agreement dated June 13, 2002, as amended, by and between Deerfoot Mall (Calgary) Ltd., and Mariposa Stores Limited Partnership ("Mariposa") for premises located at Deerfoot Mall, Calgary, Alberta (the "Lease") to 656750 Ontario Limited ("656750") pursuant to a Court Order

We are the solicitors for 656750, the assignee of the Lease. In accordance with the terms of the Procedural Order dated May 31, 2008 of the Honourable Mr. Justice Hinkson of the Supreme Court of British Columbia under Court File Number S080752 (the "Order"), please note that the Lease has been assigned by Mariposa to 656750 effective June 1, 2008.

A copy of the Assignment of Lease duly executed by Mariposa and 656750 as well as a copy of the Order is attached hereto.

Yours Truly,


FLUXGOLD IZSAK JAEGER LLP

Leslie A. Fluxgold


Cc: 656750 Ontario Limited (without attachments)
Mariposa Stores Limited Partnership (without attachments)
Borden Ladner Gervais LLP (without attachments)

ASSIGNMENT OF LEASE
Deerfoot Mall

The lease made June 13, 2002 between Mariposa Stores Limited Partnership and Deerfoot Mall (Calgary) Ltd., a copy of which is attached here to as Schedule "A" is hereby assigned and transferred by Mariposa Stores Limited Partnership to 656750 Ontario Limited pursuant to and in accordance with the Order of Mr. Justice Hinkson dated May 31, 2008 made in BC Supreme Court Action No. S080752, a copy of which is attached hereto as Schedule "B".

Dated this 1st day of June, 2008.

656750 ONTARIO LIMITED

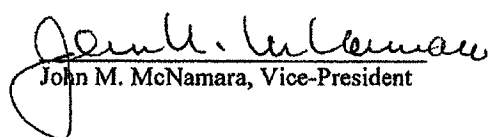


Money Bealor, A.S.O.

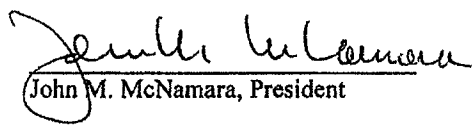
MARIPOSA STORES LIMITED PARTNERSHIP

By its general partners:

Gray's Apparel Company Ltd.


John M. McNamara, Vice-President

Backbay Retailing Corporation


John M. McNamara, President