

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF  
PLEASE MUM PARTNERSHIP  
ELIA FASHIONS LTD.  
BOSSA NOVA FASHIONS LTD.**

**APPLICATION RESPONSE**

Application response of:

Ivanhoe Cambridge Inc.  
20 Vic Management Limited  
Morguard Investments Limited  
Retrocom Mid Market REIT and  
Primaris Retail Real Estate Investment Trust  
(the "Application Respondents")

THIS IS A RESPONSE TO the notice of application of Please Mum Partnership, Elia Fashions Ltd. and Bossa Nova Fashions Ltd. (collectively "Please Mum") dated September 14, 2011.

**Part 1: ORDERS CONSENTED TO**

The Application Respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms:

NIL

**Part 2: ORDERS OPPOSED**

The Application Respondents oppose the granting of the orders set out in paragraph 1 of Part 1 of the notice of application.

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The Application Respondents take no position on the granting of the orders set out in the following paragraphs of Part 1 of the notice of application:

NIL

**Part 4: FACTUAL BASIS**

1. The Application Respondents oppose the granting of a further extension of time for Please Mum to file its proposal.

**Please Mum is not acting in good faith and with due diligence**

2. Please Mum has failed to perform its obligations since the July 7, 2011 filing of the Notice of Intention to File a Proposal (“NOI”) in that it has failed to pay amounts owing which it is obliged to pay. These amounts include:
  - a. Amounts owing to landlords for rent for the period between the filing of the NOI and the delivery of notices to disclaim leases under s. 65.2 of the *Bankruptcy and Insolvency Act* (“BIA”).
  - b. Amounts owing to landlords for rent for the notice period under s. 65.2 of the *BIA*, in the amount of approximately \$807,000.00. This amount may not include rent owing on the additional eight leases disclaimed by Please Mum in late August, 2011.
  - c. GST of approximately \$284,000.00 owing since the filing of the NOI. According to the Proposal Trustee, Please Mum has stated that this amount is being “deferred to assist with short term cash flow funding requirements”.
3. These post-filing amounts owing to landlords for rent and to the Receiver General for GST have instead been paid to Please Mum’s banker Royal Bank of Canada in reduction of pre-filing amounts owing by Please Mum. Royal Bank of Canada was owed approximately \$2,650,000.00 at the time of filing the NOI, and as at September 14, 2011 this amount had been reduced to approximately \$750,000.00.
4. Please Mum had the actual use and occupation of the disclaimed premises following sending of the notices to disclaim, but has failed to pay for such occupation.
5. Please Mum has suggested that the post-filing rent obligation can be compromised in a proposal, but post-filing claims are not claims provable in a proposal.
6. When applying for the previous extension application, Please Mum failed to give notice of the application to landlords who had already objected to Please Mum’s failure to pay post-filing rent.
7. The property on Woodland Drive, Vancouver referred to in Please Mum’s material is owned by another corporation. This other corporation is not a party to this proceeding, and has no obligations to any Please Mum creditor other than Royal Bank of Canada.

8. Although Please Mum suggests that the proceeds from the sale of this property will go to pay off Please Mum's debt to Royal Bank of Canada, there is no commitment by this other corporation to make such a payment. Such payment would result in this other corporation applying its assets to payment of Please Mum's debts, and such payment would not be in this other corporation's best interests. As a guarantor, this other corporation would be entitled to call for the assignment of the debt and security held by Royal Bank of Canada in the event of a call under its guarantee.
9. Since the filing of the NOI, Please Mum has been in liquidation. It has reduced its business from approximately 90 locations down to the present 13 locations, and has acquired virtually no new inventory. Please Mum's creditors have not been given an opportunity to consider such liquidation through a vote in a Proposal.

**Please Mum Is Not Likely to Make a Viable Proposal**

10. The total unsecured debt owing by Please Mum includes the following amounts:
  - a. Trade debt of approximately \$6,652,000.00.
  - b. Amounts owing to landlords for pre-filing rent of approximately \$703,000.00.
  - c. Amounts owing to landlords for damages for disclaimed rent under s. 65.2 of the *BIA*. Precise calculation of this amount is impossible until and unless Please Mum files a proposal setting out how such damages claim is to be calculated under s. 65.2 of the *BIA*. However, under the calculation methods set out in s. 65.2, such damages claims will exceed one year of rent payments in almost any scenario (unless a particular lease had less than a year remaining). As a rough calculation, if one month's rent is equal to \$807,000.00, then the total of the damages claim of the landlords for even just one year would be approximately \$9,684,000.00.
11. These amounts together total approximately \$17,000,000.00.
12. Based on the thirteen locations still operating, and the cashflow statements set out in the Proposal Trustee's second report, Please Mum is forecast to generate net operating revenue of approximately \$310,000.00 per month, before income tax, depreciation, and any capital repayment or other return on investment.
13. The above debt totals do not include:
  - a. Please Mum's liability for gift cards, in the amount of approximately \$750,000.00.
  - b. Unpaid post-filing amounts, including the GST and rent amounts referred to above.

- c. \$138,000.00 of environmental expenses owing to Keystone, as referred to in the Proposal Trustee's second report.
- d. \$222,000.00 of legal and professional fees, as referred to in the Proposal Trustee's second report.

### **Creditors are Being Materially Prejudiced**

- 14. Please Mum's NOI proceeding has resulted in prejudice to those landlords owning the vast majority of Please Mum's locations whose leases have been disclaimed by Please Mum. The inventory held at the premises of these landlords was removed in prejudice to the landlords' rights of distraint.
- 15. Amounts owing to these landlords have instead been paid to Royal Bank of Canada to reduce its pre-filing debt owed by Please Mum, even though the landlords' rights of distraint have priority ahead of the security interests of a secured creditor.
- 16. Please Mum's NOI proceeding has also prejudiced other creditors, such as the Receiver General for GST. Although the cashflow statement attached to the Proposal Trustee's second report shows some payments on account of GST, the earlier cashflow statements attached to the Proposal Trustee's first report, also showed payments on account of GST, but these payments were not in fact made.
- 17. Further extension of these proceedings will allow further prejudice to accrue to creditors of Please Mum.

### **Part 5: LEGAL BASIS**

- 1. The Application Respondents rely on:
  - a. Sections 2, 50, 50.4, 65.1, 65.2, 66, 69(1) and 121(1) of the *BIA*;
  - b. *Re San Francisco Gifts Ltd.*, 2005 ABQB 91;
  - c. *Cliffs Over Maple Bay Investments Ltd. v. Fisguard Capital Corp.*, 2008 BCCA 327; and
  - d. *1252206 Alberta Ltd. v. Bank of Montreal*, 2009 ABQB 355.

### **Part 6: MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of Kathryn Adrian sworn July 29, 2011;
- 2. First Report to the Court of Deloitte & Touche Inc. as Proposal Trustee dated August 2, 2011;
- 3. Order of August 5, 2011;

4. Affidavit #2 of Kathryn Adrian sworn September 14, 2011;
5. Second Report to the Court of Deloitte & Touche Inc. as Proposal Trustee dated September 14, 2011; and
6. Affidavit #1 of Linda Galessiere sworn September 19, 2011.

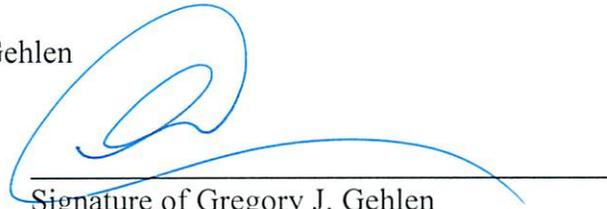
The Application Respondents estimate that the application will take 60 minutes.

- The Application Respondents have not filed in this proceeding a document that contains an address for service. The Application Respondents' ADDRESS FOR SERVICE is:

c/o Gehlen Dabbs  
Barristers & Solicitors  
1201-1030 West Georgia Street  
Vancouver, BC, V6E 2Y3

Attention: Gregory J. Gehlen

Dated: September 19, 2011



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Signature of Gregory J. Gehlen  
Lawyer for Application Respondents,  
Ivanhoe Cambridge Inc.,  
20 Vic Management Limited,  
Morguard Investments Limited,  
Retrocom Mid Market REIT, and  
Primaris Retail Real Estate Investment Trust