

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 -

GORDON BROTHERS CANADA ULC

Liquidator

- 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

THE AFFECTED PARTIES LISTED ON
SCHEDULE "A"

Mis-en-cause

MOTION FOR AN ORDER (i) EXTENDING THE STAY PERIOD AND (ii) EXPANDING
THE SCOPE OF SUPER-PRIORITY CHARGES

(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:
 - (a) extending the Stay Period (as defined below) for an additional period of forty-five (45) days from the expiry of the initial Stay Period, until **January 24, 2020**; and
 - (b) expanding the scope of the Charges (as defined in the First Day Order in these proceedings rendered on November 12, 2019), such that they may cover all the assets of the Petitioners, with no exception;

the whole substantially in the form of the draft First Stay Extension and Charges Expansion 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, as contemplated at the time, 29 Bouclair retail stores (with an additional six (6) 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 Process**”).
8. In order to implement the second component of the Restructuring Process (i.e. the Liquidation Process), 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 Process.
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 Process, as appears from the Court record.

III. RESTRUCTURING EFFORTS

A. The Liquidation Process

10. Since November 15, 2019, Bouclair, with the assistance of the Liquidator, has been conducting the Liquidation Process in the Liquidation Stores.

11. As of the date hereof, sales generated by the Liquidation Process have exceeded the targets which were set with the Liquidator.
12. Moreover, as of the date hereof, an additional two (2) Bouclair retail locations have been added to the list of Liquidation Stores, bringing the total number of Liquidation Stores to 31.
13. As of the date hereof, Bouclair has sent notices of disclaimer or rescission in respect of all thirty-one (31) Liquidation Stores, of which twenty-two (22) are effective as of December 25, 2019, eight (8) are effective as of December 31, 2019, and one (1) is effective as of January 7, 2020.
14. Pursuant to the terms of the Consulting Agreement, the Liquidation Process was expected to last until December 29, 2019. However, the parties have the option to extend the sale term of the Liquidation Process by mutual agreement.

B. Landlord Negotiations

15. 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.
16. To implement the Transaction, the operating costs in these locations need to be reduced. Since the filing of the NOIs, Bouclair has therefore approached several landlords to seek consensual amendments to existing leases.
17. Although several amendments have been agreed-upon, to date, these concern a limited number of locations and discussions are continuing in regard to specific locations that management has identified as requiring improved economics or business terms.

C. Implementation of the Transaction

18. Following the filing of the present proceedings, the Petitioners have continued to engage in discussions with their principal secured lender, National Bank of Canada (“NBC”), as well as with third party lenders who may be willing to refinance the NBC loan.
19. The Petitioners are exploring options whereby another lender would grant a loan to the Proposed Purchaser which would serve, *inter alia*, to finance the operations of the Proposed Purchaser and to reduce the exposure of the NBC under its term loan.
20. As of the date hereof, although non-binding term sheets have been executed by the proposed equity investors and proposed lenders for the equity investors, an agreement has yet to be reached between Bouclair and a third-party lender.

21. Bouclair and the Proposed Purchaser are actively seeking to accelerate the pace of the discussions, as they are mindful of the need to close the Transaction as early as possible.
22. At present, provided binding commitments are received during the month of December 2019, it is expected that the Transaction could close in January 2020.
23. The Petitioners intend 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.

D. Forbearance Agreement with NBC

24. The NBC loan has been in default since the Spring of 2019. As such, on or around April 4, 2019, NBC retained the services of Richter Advisory Group Inc. 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.
25. On November 12, 2019, NBC and the Petitioners finalized the terms of a Fourth Forbearance Agreement pursuant to which NBC agreed to tolerate Bouclair's defaults and finance its operations until December 29, 2019, as appears from the Court record.
26. As of the date hereof, the term of the Fourth Forbearance Agreement has yet to be extended to the date of the proposed extension of the Stay Period (i.e. January 24, 2020).

IV. REQUEST FOR EXPANSION OF THE SCOPE OF THE SUPER-PRIORITY CHARGES

27. In light of the timing of the filing of the NOIs, it was expected by the Petitioners, as of the date of the hearing on the First Day Order, that the Petitioners would have provided advance notice of their Initial Motion to NBC and to their subordinated lenders, but would not have provided any advance notice of their Initial Motion to the affected parties listed on **Schedule "A"** attached hereto (the "**Affected Parties**").
28. The Affected Parties included, at Section A of **Schedule "A"**, certain parties which had registered security interests over assets in specific Bouclair stores, as such security interests are outlined in **Schedule "B"** attached hereto.
29. For that reason, the definition of "Affected Assets" over which the Charges (as defined in the First Day Order) apply in conformity to the First Day Order specifically excludes the assets over which the parties listed in Section A of **Schedule "A"** had registered security interests.
30. The Petitioners specified in their Initial Motion that they intended to return before this Court, after the Affected Parties had been duly notified, to expand

the scope of the Charges (as defined in the First Day Order) created pursuant to the First Day Order, such that they may cover all the assets of Bouclair, with no exception.

31. The Petitioners were able to provide advance notice of the present proceedings to the Affected Parties, and respectfully request that this Court expands the scope of the Charges (as defined in the First Day Order), such that they may cover all the assets of Bouclair, with no exception.

V. GROUNDS FOR THIS MOTION

32. 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.
33. It is respectfully submitted that, at this stage, the continuation of the Restructuring Process for an additional period of time in the context of these proceedings still constitutes the best option in order to meet the above objective.
34. In light of the foregoing, the Petitioners respectfully submit that the Stay Period should be extended until January 24, 2020 (i.e. 45 days).
35. Such extension should allow the Petitioners and their financial advisors to have sufficient time to:
 - (a) finalize the Liquidation Process;
 - (b) continue negotiations with specific landlords where amendments to the current leases are deemed necessary;
 - (c) implement the Transaction, for the benefit of all the stakeholders;
 - (d) potentially present a proposal to creditors; or
 - (e) consider other alternatives.
36. 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.
37. The Petitioners understand that the Proposal Trustee will file, prior to the hearing on this Motion, a report, in which the latter will confirm, *inter alia*, the Proposal Trustee's support for the extension requested herein.
38. 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 and Expanding the Scope of Super-Priority Charges* (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 January 24, 2020;
- [4] **DECLARE** 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 Inc., with no exception;
- [5] **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, December 6, 2019

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)

SCHEDULE "B"

DEFINITION OF "AFFECTED ASSETS"

"**Affected Assets**" means all of Bouclair Inc. and Bouclair International Inc.'s assets, but excluding the following assets:

1. The universality of all present and future moveable property, used for the exploitation of a Bouclair Inc. store located at 7151, Des Roseraies, Anjou (Place Anjou) and physically located at this location but wherever this moveable property may be located thereafter, save and except for all vehicles, present and future, of Bouclair Inc., and on which a conventional movable hypothec without delivery is registered in favour of the **Business Development Bank of Canada**;
2. The universality of all movables found in the premises leased by Bouclair Inc. at the "Centre Riocan Kirkland" bearing civic numbers 3000 to 3430 Jean-Yves Street, in the City of Kirkland, Province of Québec, including but not limited to all machinery, equipment, furniture, fixtures, inventory, merchandise and any sub-rentals receivable by Bouclair Inc. and any insurance proceeds relating to the foregoing and any other property which may at any time as of the commencement of the Term (as such term is defined in the Lease between Riotrin Properties (Kirkland) Inc. and Bouclair Inc.) be on the leased premises, and on which a conventional movable hypothec without delivery is registered in favour of **Riotrin Properties (Kirkland) Inc.**;
3. The universality of all movables found in the premises leased by Bouclair Inc. at the "Place Kennedy" bearing civic numbers 76 to 98 Route du Président-Kennedy, in the City of Lévis, Province of Québec, including but not limited to all machinery, equipment, furniture, fixtures, inventory, merchandise and any sub-rentals receivable by Bouclair Inc. and any insurance proceeds relating to the foregoing and any other property which may at any time as of the commencement of the Term (as such term is defined in the Lease between Riocan Holdings (Québec) Inc. and Bouclair Inc.) be on the leased premises, and on which a conventional movable hypothec without delivery is registered in favour of the **Riocan Holdings (Québec) Inc.**;
4. The universality of Bouclair Inc.'s moveable property, present and future, namely the whole of the moveable property of Bouclair Inc. located in the premises leased by Bouclair Inc. at the shopping centre known as "Place du Royaume", bearing civic number 1401 Talbot Boulevard, City of Chicoutimi, Province of Québec, and on which a conventional movable hypothec without delivery is registered in favour of **Place du Royaume Inc.**;
5. The universality of Bouclair Inc.'s moveable corporeal property, present and future, located in the premises leased by Bouclair Inc. at Quartier DIX30 in Brossard, Québec, and on which a conventional movable hypothec without delivery is registered in favour of **Riocan Holdings (Brossard) Inc., 9224-1892 Québec Inc. and 9171-9922 Québec Inc.**;

6. All of the rights, title and interest of Bouclair Inc. in and to the universality of all moveable improvements, equipment, machinery, furniture and trade fixtures of every kind, present and future, located on or upon the premises leased by Bouclair Inc. situated at 43-55 Boulevard Cité-des-Jeunes, Vaudreuil, Québec, J7V 8C1 or used directly or indirectly in connection with the business of Bouclair Inc. carried on at such leased premises, including all indemnities or proceeds paid under insurance contracts or policies pertaining to or covering such moveable, and on which a conventional movable hypothec without delivery is registered in favour of **Vaudreuil Shopping Centres Limited**;
7. The universality of all moveable corporeal or incorporeal property, present and future, located in the premises leased by Bouclair Inc. at store #104 in the "Carrefour Neufchatel", in the city of Neufchatel, Québec, and on which a conventional movable hypothec without delivery is registered in favour of **Desjardins Sécurité Financière, Compagnie d'assurance-vie et Fonds Immobilier Cogir 1, Société en commandite**; and
8. All of Bouclair Inc.'s present and after-acquired personal property including, without limitation, all inventory, fixtures, equipment, chattel paper, documents of title, goods, instruments, money, securities, accounts and intangibles (each as defined in the Personal Property Security Act (Ontario)) and any and all improvements which the debtor effects on or in respect of the lands and premises municipally known as unit B09, 950 Lansdowne Street, Peterborough, Ontario and all proceeds thereof, and on which a security interest is registered in favour of **Peterborough Retail Portfolio LP**.

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 and Expanding the Scope of Super-Priority Charges* are true.

AND I HAVE SIGNED



LIONEL TROMBERT

**Solemnly declared before me at Montreal,
on the 6th day of December, 2019**



Commissioner of oath
for the Province of Quebec

PATRICK FILLION
Permis: 144981

NOTICE OF PRESENTATION

TO: the Service List

TAKE NOTICE that the *Motion for an Order Extending the Stay Period and Expanding the Scope of Super-Priority Charges* 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, in the Montréal Courthouse, 1 Notre-Dame Street East, **on Tuesday December 10, 2019** at a time and in a room to be determined by the Court and communicated to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, December 6, 2019

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

**SUPERIOR COURT
(Commercial Division)**

**Court No: 500-11-057470-193
File No: 41-2582132**

**Court No: 500-11-057469-195
File No: 41-2582130**

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

**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 -
GORDON BROTHERS CANADA ULC **Proposed Liquidator**

- and – *et al.*
BS0350 **Our file: 041315-1033**

**MOTION FOR AN ORDER (i) EXTENDING THE STAY
PERIOD AND (ii) EXPANDING THE SCOPE OF SUPER-
PRIORITY CHARGES
(Section 50.4(9) of the *Bankruptcy and Insolvency Act*)
AFFIDAVIT OF LIONEL TROMBERT
NOTICE OF PRESENTATION
and EXHIBIT P-1**

ORIGINAL

M^e Guy P. Martel	Direct : 514 397 3163
Email :	gmartel@stikeman.com
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**