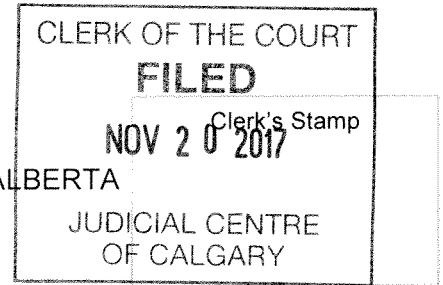


COURT FILE NUMBER 1701-14466
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c. C-36, AS
AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF 1031084 ALBERTA LTD. AND
623735 SASKATCHEWAN LTD.**

DOCUMENT

(Cross)

APPLICATION

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

McCARTHY TÉTRAULT LLP
Barristers & Solicitors
Suite 4000, 421 - 7 Avenue S.W.
Calgary, AB T2P 4K9
Attention : Walker W. MacLeod/ Pantelis Kyriakakis
Phone: 403-260-3710/3536
Fax: 403-260-3501
Email: wmacleod@mccarthy.ca/
pkyriakakis@mccarthy.ca

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: November 28, 2017
Time: 11:00 am
Where: Calgary Courts Center
Before Whom: The Honourable Madam Justice Dario

Go to the end of this document to see what else you can do and when you must do it.

This Application is being made by the Sellers. All capitalized terms used but not defined in this Application shall bear their meanings as defined in the asset purchase agreement between the Sellers and the Purchaser, dated October 31, 2017, and attached to the initial order issued in the within proceedings on October 31, 2017 (the "**Sale Agreement**").

Remedy Claimed or Sought:

1. An order declaring that the time for service of this application (the "**Application**") is abridged, the Application is properly returnable on November 28 2017 and that service of the Notice of Application on the service list is validated, good and sufficient.
2. An Order, in substantially the form of the proposed Order attached hereto as **Schedule "A"** (the "**Vesting Order**"), granting relief including but not limited to:
 - (a) approving the Sale Agreement and authorizing the Sellers to complete the transactions contemplated therein:
 - (b) declaring that upon delivery of the closing certificate by the Monitor to the Purchaser, all of the Sellers' right, title, estate and interest in and to the Acquired Assets shall vest in the Purchaser or its assignee, free and clear of all interests, liens, charges and encumbrances, other than the Assumed Liabilities; and
 - (c) Such further and other relief as this Honourable Court may deem just in all of the circumstances.

Grounds for Making this Application:

3. The Sellers commenced restructuring proceedings under the *Bankruptcy and Insolvency Act* (Canada) on October 2 and 3, 2017, converted the proceedings to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and were granted an Initial Order (the "**Initial Order**") on October 31, 2017 (the "**CCAA Proceedings**").
4. The Monitor was appointed as monitor of the Sellers pursuant to the Initial Order.
5. The Sellers are engaged in the business of selling sunglasses, watches, and related apparel and accessories under the brand name "Spareparts" (the "**Business**"), through various retail locations in malls located in Western Canada and Ontario.

6. The Sellers have entered into an agreement for the purchase and sale of the Acquired Assets. The Acquired Assets have been exposed to the market in a fair and fulsome process and the offer made by the Purchaser for the Acquired Assets is the highest and best return in the circumstances. It is appropriate for the Acquired Assets to be transferred and conveyed to the Purchaser pursuant to the Vesting Order.

7. Such further and other grounds as this Honourable Court as counsel may advise and this Honourable Court may permit.

Material or Evidence to be Relied On:

8. The pleadings and proceedings had and taken in this Action, including the Second Danny Mysak Affidavit, filed.

9. The Second Monitor's Report.

10. Such further or other material or evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

11. Rule 6.3(1) of the *Alberta Rules of Court*.

12. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

13. The CCAA.

14. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied On:

15. There are no irregularities complained of, or objections relied on.

How the Application is Proposed to be Heard or Considered:

16. In person before the presiding Justice on the Commercial List.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

COURT FILE NUMBER 1701-14466
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



PLAINTIFF **IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c. C-36, AS AMENDED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1031084 ALBERTA LTD. AND 623735 SASKATCHEWAN LTD.

DOCUMENT **ORDER (Approval and Vesting Order)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCARTHY TÉTRAULT LLP
Barristers & Solicitors
Suite 4000, 421 - 7th Avenue S.W.
Calgary AB T2P 4K9
Attention : Walker W. MacLeod/ Pantelis Kyriakakis
Phone: 403-260-3710/3536
Fax: 403-260-3501
Email: wmacleod@mccarthy.ca/
pkiriakakis@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: November 28, 2017
LOCATION OF HEARING OR TRIAL: Calgary
NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Madam Justice Dario

UPON THE APPLICATION of the Sellers for an order approving the asset purchase agreement attached as Exhibit "B" to the initial order issued in the within proceedings on October 31, 2017 (the "**Sale Agreement**") and vesting in the Purchaser the Sellers' right, title and interest in the Acquired Assets; **AND UPON** noting the initial order issued in the within proceedings on or about October 31, 2017 (the "**Initial Order**"); **AND UPON** having read the Second Danny Mysak Affidavit, dated November •, 2017 (the "**Second Mysak Affidavit**"); **AND UPON** having read the Second Report of the Monitor, dated November •, 2017 (the "**Second Monitor's Report**"); **AND UPON** having read the Affidavit of Service of Katie Doran, sworn on November •, 2017 (the "**Service Affidavit**"); **AND UPON** hearing counsel for the Monitor;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

Defined Terms

2. All capitalized terms used herein shall have the ascribed to them in either the Sale Agreement or the Initial Order, as applicable.

Assignment

3. The Assignment of the Sale Agreement by 102033714 Saskatchewan Corp. to 102036378 Saskatchewan Ltd. be and is hereby approved and all references to "Purchaser" in this Order shall mean and refer to 102036378 Saskatchewan Ltd. or its permitted nominee or assignee.

Approval of Transaction

4. The Sale Agreement is hereby approved in its entirety and is declared to be commercially reasonable and in the best interest of the Sellers and their stakeholders. All of the transactions contemplated by the Sale Agreement (collectively, the "**Transaction**") are hereby approved, and the execution of the Sale Agreement by the Sellers is hereby authorized and approved, with such minor amendments as the Sellers may deem necessary. The Sellers are hereby authorized and directed to complete the Transaction and, subject to the terms of the Sale Agreement, to perform their obligations under the Sale Agreement and any ancillary documents related thereto, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Acquired Assets to the Purchaser.

Vesting of Property

5. Upon the delivery of a Monitor's certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule "A"** hereto (the "**Monitor's Certificate**"), all of the Sellers' right, title and interest in and to the Acquired Assets described in section 2.1 of the Sale Agreement and listed on **Schedule "B"** hereto, shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

- (a) the Administrative Charge;
- (b) any encumbrance or charge created by any order issued in the NOI Proceedings;
and
- (c) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, easements and restrictive covenants listed on **Schedule "C"** (the "**Permitted Encumbrances**"));

for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Acquired Assets are hereby expunged and discharged as against the Acquired Assets, provided, however, that the Purchaser shall remain liable for and obtain the benefit of any obligations or liabilities arising pursuant to and in accordance with the terms of the Designated Seller Contracts.

Assignment of the Designated Seller Contracts

6. Upon the delivery of a Monitor's Certificate to the Purchaser (or its nominee), all of the rights and obligations of the Sellers in and to the Designated Seller Contracts described in **Schedule "D"** hereto be and are hereby assigned to the Purchaser pursuant to and in

accordance with section 11.3 of the CCAA and the Purchaser shall be entitled to all of the rights, remedies and benefits, and shall assume and be subject to all obligations, liabilities and restrictions, contained in and associated with the Designated Seller Contracts.

7. The assignment of the Designated Seller Contracts to the Purchaser is hereby declared to be valid and binding upon each and every counterparty to a Designated Seller Contract, notwithstanding any restrictions or prohibitions contained in any of the Designated Seller Contracts relating to the assignment thereof, and the Purchaser shall be and is entitled to have and to hold quiet enjoyment of all lands and premises associated with the Designated Seller Contracts in accordance with the terms and conditions thereof. Each Person who is a counterparty to any Designated Seller Contract (including any assignee) are permanently stayed, estopped and restrained from accelerating, terminating, rescinding, exercising any rights or remedies, refusing to perform or otherwise repudiating any obligations under any Designated Seller Contract on account or by reason of (i) any monetary defaults on any of the Designated Seller Contracts that have occurred prior to the closing of the Transaction; (ii) the Sellers' entering into or performing their obligations under the Sale Agreement; or (iii) any breach, default or non-compliance with any term, covenant or condition in any contract or agreement, whether oral or written, between the Sellers and any Person. For greater certainty, except as may otherwise be agreed to by the applicable counterparty to any Designated Seller Contract and the Purchaser, nothing herein shall:

- (a) affect the rights and remedies of any the counterparty to any Designated Seller Contract against the Purchaser for any default on any Designated Seller Contract that occurs after the closing of the Transaction; or
- (b) amend or vary, or be deemed to amend or vary, the terms of any Designated Seller Contracts.

8. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor other than the Claims associated with the Permitted Encumbrances.

9. The Sellers and all Persons who claim by, through or under the Sellers in respect of the Acquired Assets, save and except for the Persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Acquired Assets and, to the extent that any such

persons remains in possession or control of any of the Acquired Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

10. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Acquired Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.

11. The Monitor is to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof to the Purchaser (or its nominee).

12. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* and section 20(e) of the *Alberta Personal Information Protection Act*, the Sellers as Monitor are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Seller's records pertaining to the Seller's past and current employees, including personal information of those employees listed in the Sale Agreement. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Sellers.

13. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Acquired Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Sellers and shall not be void or voidable by creditors of the Sellers, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. The Sellers, the Purchaser (or its nominee), the Monitor and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

Discharge of the Court Officer

15. Upon the filing of the Monitor's Certificate with this Honorable Court and based on the evidence that is currently before this Honourable Court, it is ordered and declared that:

- (a) the Court Officer has acted honestly and in good faith, and has dealt with the Seller as the Acquired Assets in a commercially reasonable manner;
- (b) the actions and conduct of the Court Officer are approved and the Court has satisfied all of its duties and obligations under the BIA as the CCAA;
- (c) the Court Officer shall not be liable for any act or omission pertaining to the discharge of the Court Officer's duties as proposal trustee or monitor of the Seller, save and except for any liability arising out of the fraud, gross negligence or wilful misconduct on the part of the Court Officer; and
- (d) any and all claims against the Court Officer arising from, relating to or in connection with the performance of the Court Officer's duties and obligations as proposal trustee and monitor of the Seller, shall be forever barred and extinguished.

16. No action or proceeding arising from, relating to, or in connection with the performance of the Court Officer's duties and obligations in respect of the Sellers and the Acquired Assets may be commenced or continued without the prior leave of this Honourable Court, on notice to the Court Officer and on such terms as this Honourable Court may direct.

17. The fees and disbursements of the Court Officer, counsel to the Court Officer and counsel to the Sellers, as summarized at ● of the Second Monitor's Report, be and are hereby approved.

Miscellaneous Matters

18. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Sellers, the Monitor and their agents in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders as to provide such assistance to the Sellers and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Sellers and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Sellers and Monitor and their agents in carrying out the terms of this Order.

19. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

20. Service of this Order on any Person not attending this application is hereby dispensed with.

J.C.Q.B.A.

**SCHEDULE "A" TO THE VESTING ORDER
FORM OF RECEIVER'S CERTIFICATE**

COURT FILE NUMBER 1701-14466
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp	
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PLAINTIFF **IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, RSC 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 1031084 ALBERTA LTD. AND 623735
SASKATCHEWAN LTD.**

DOCUMENT **MONITOR'S CERTIFICATE**

ADDRESS FOR SERVICE McCARTHY TÉTRAULT LLP
AND CONTACT Barristers & Solicitors
INFORMATION OF Suite 4000, 421 - 7th Avenue S.W.
PARTY FILING THIS Calgary AB T2P 4K9
DOCUMENT Attention : Walker W. MacLeod/ Pantelis Kyriakakis
 Phone: 403-260-3710/3536
 Fax: 403-260-3501
 Email: wmacleod@mccarthy.ca/ pkiriakakis@mccarthy.ca

RECITALS

- A. Pursuant to an Order of the Honourable Justice Yamuauchi of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated October 31, 2017, KPMG Inc. was appointed as the monitor (the "**Monitor**") of the Sellers.
- B. Pursuant to an Order of the Court dated November 28, 2017, the Court approved the agreement of purchase and sale made as of October 31, 2017 (the "**Sale Agreement**").
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Sellers and the Purchaser (or its nominee);
2. The Transaction has been completed to the satisfaction of the Monitor; and
3. This Certificate was delivered by the Monitor at **[Time]** on **[Date]**.

KPMG, in its capacity as court-appointed Monitor of 1031084 Alberta Ltd. and 623735 Saskatchewan Ltd., and not in its personal capacity.

Per: _____

Name:
Title

**SCHEDULE "B" TO THE FORM OF ORDER (Sale Approval and Vesting Order)
DESIGNATED SELLER CONTRACTS**

All of the Acquired Assets as listed and defined in section 2.1 of the Sale Agreement but excluding the Excluded Assets.

SCHEDULE "C" TO THE FORM OF ORDER (Sale Approval and Vesting Order)

1. The RBC Liabilities and the RBC Liens;
2. The BDCC Liabilities and the BDCC Liens;
3. The Critical Supplier Charge, but only to and as against the Critical Supplier Property (as such terms are defined in the Initial Order); and
4. The claims of Element Financial Corporation and Steelcase Financial Services Ltd.

SCHEDULE “D” TO THE VESTING ORDER

British Columbia	
Store	Agreements
ORCHARD PARK	Lease Agreement made April 1 st , 2011 between Orchard Park Shopping Centre Holdings Inc. (as Landlord) and 623735 Saskatchewan Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
PACIFIC CENTRE LEASEHOLD	Lease Agreement made August 10 th , 2015 between Pacific Centre Leaseholds Limited (Cadillac Fairview) (as Landlord) and 1031084 Alberta Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
Alberta	
Store	Agreements
BOWER PLACE	Lease Agreement made June 4 th , 2015 between bcIMC Realty Corporation (as Landlord) and 1031084 Alberta Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
PETER POND SHOPPING CENTRE	Lease Agreement made August 27 th , 2014 between Peter Pond Portfolio Inc. (as Landlord) and 623735 Saskatchewan Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
PRAIRIE MALL SHOPPING CENTRE	Lease Agreement made January 29 th , 2015 between Revenue Properties Company Limited and Prairie Mall Building Limited (collectively, as Landlords) and 1031084 Alberta Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
WEST EDMONTON MALL	Lease Agreement made May 4 th , 2017 between West Edmonton Mall Property Inc. (as Landlord) and 1031084 Alberta Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
CHINOOK CENTRE	Lease Agreement made October 4 th , 2012 between Ontrea Inc. by its duly authorized agent The Cadillac Fairview Corporation Limited (as Landlord) and 1031084 Alberta Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
MARKET MALL LEASEHOLDS INC.	Lease Agreements made July 18 th , 2012 between Market Mall Leaseholds Inc. (as Landlord) and 1031084 Alberta Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
Saskatchewan	

Store	Agreements
HEAD OFFICE	Lease Agreement made April 26 th , 2016 between Bwright Holdings Ltd (as Landlord) and 623735 Saskatchewan Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
CORNWALL CENTRE	Lease Agreement made March 23 rd , 2011 between Cornwall Centre Inc. (as Landlord) and 623735 Saskatchewan Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
MIDTOWN PLAZA	Lease Agreement made May 18 th , 2011 between Midtown Plaza Inc. (as Landlord) and 623735 Saskatchewan Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
Manitoba	
Store	Agreements
ST. VITAL CENTRE	Lease Agreement made November 26 th , 2013 between OPB Realty Inc. (as Landlord) and Spareparts Inc. (as Tenant), as subsequently amended, restated, or supplemented from time to time
POLO PARK	Lease Agreement made March 3 rd , 2010 between Ontrea Inc. by its duly authorized agent, The Cadillac Fairview Corporation Limited (as Landlord) and 1031084 Alberta Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
Ontario	
Store	Agreements
MASONVILLE PLACE	Lease Agreement made October 14 th , 2015 between Ontrea Inc. by its duly authorized agent, The Cadillac Fairview Corporation Limited (as Landlord) and 1031084 Alberta Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time
RIDEAU CENTRE	Lease Agreement made August 10 th , 2016 between Viking Rideau Corporation (as Landlord) and 1031084 Alberta Ltd. (as Tenant), as subsequently amended, restated, or supplemented from time to time