

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TRAVELBRANDS INC. (the "**Applicant**")

MOTION RECORD

June 12, 2015

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Lawyers for 75 Eglinton Avenue East Limited
Partnership

TO: THIS HONOURABLE COURT

TO: THE SERVICE LIST

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SUPERIOR COURT OF JUSTICE
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1	Notice of Motion dated June 12, 2015
2	Affidavit of Carl J.F. Stetler sworn June 12, 2015
A	Exhibit "A" – Notice of Disclaimer dated May 29, 2015
3	Draft Consent Order

TAB 1

**ONTARIO
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NOTICE OF MOTION

75 Eglinton Avenue East Limited Partnership (the "**Landlord**") will make an a motion to the Court on Monday, June 15, 2015 at 9:30 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12(1) because it is (insert one of on consent, unopposed or made without notice);
- in writing as an opposed motion under subrule 37.12(4);
- orally.

THIS MOTION IS FOR:

1. An order in the form attached at Tab 3 hereto (the "**Consent Order**").
2. Such further and other Orders as may be necessary.

THE GROUNDS FOR THE MOTION ARE:

1. All interested parties have consented to the Consent Order in the form attached.
2. The Monitor supports the granting of the Consent Order.

3. No rights of other parties, including sub tenants, are being affected by the Consent Order.
4. The purpose of the Consent Order is to give third parties and sub tenants certainty that they may deal directly with the Landlord in respect of the Building during the Notice Period as the Landlord seeks to mitigate its loss. The Consent Order is being sought without prejudice to any of the Landlord's rights to challenge subsequent steps and other relief sought by the Applicants in these CCAA proceedings.
5. Rules 1.05 and 37 of the *Rules of Civil Procedure* .
6. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Carl J.F. Stetler sworn June 12, 2015 and exhibits thereto.
2. Such further and other material as counsel may advise and this Honourable Court may permit.

June 12, 2015

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TRAVELBRANDS INC. (the "Applicant")

Court File No.: CV15-10980-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

NOTICE OF MOTION

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TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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AFFIDAVIT OF CARL J.F. STETLER
(Sworn June 12, 2015)

I, **CARL J.F. STETLER**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

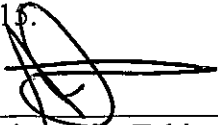
1. I am the Vice President, 75 Eglinton Avenue East Holdings Inc., which is the general partner of 75 Eglinton Avenue East Limited Partnership ("**75 Eglinton LP**" or the "**Landlord**"), and as such I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have obtained facts from other sources, I have so indicated and I believe those facts to be true.
2. On May 27, 2015, TravelBrands was granted protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the Order of Mr. Justice Newbould dated May 27, 2015 (the "**Initial Order**").
3. Pursuant to a lease agreement dated March 28, 2008, as amended (the "**Lease**"), 75 Eglinton LP is the Landlord of TravelBrands Inc. ("**TravelBrands**" or the "**Applicant**") in respect of the premises located at 75 Eglinton Avenue East, Toronto, Ontario (the "**Building**").
4. As described in the Affidavit of Francesco DeMarinis sworn on May 26, 2015 in support of the Initial Order (the "**Initial Affidavit**"), TravelBrands has sub leased portions of its

leased premises at the Building to various sub tenants. Copies of the sub leases were attached at Exhibit "S" of the Initial Affidavit. A copy of the Initial Affidavit can be found on the Monitor's website:

<http://www.kpmg.com/ca/en/services/advisory/transactionrestructuring/creditorlinksites/ravelbrands/pages/default.aspx>.

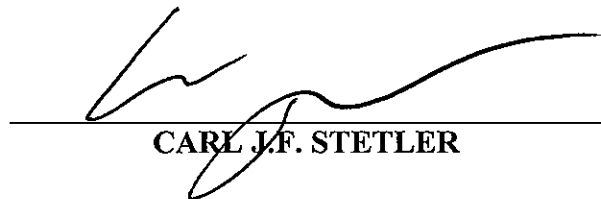
5. On May 29, 2015, the Landlord received a Notice of Disclaimer in respect of the Lease pursuant to section 32 of the CCAA (the "**Disclaimer**"). A copy of the Disclaimer is attached hereto as Exhibit "A". The effective date of the Disclaimer is June 29, 2015. The period between May 29, 2015 and June 29, 2015 is referred to herein as the "**Notice Period**".
6. The Applicant and the Landlord have agreed to the consent draft order attached at Tab 3 of this Motion Record (the "**Consent Order**"). The purpose of the Consent Order is to give third parties and sub tenants certainty that they may deal directly with the Landlord in respect of the Building during the Notice Period.
7. The Consent Order is being sought without prejudice to any of the Landlord's rights to challenge subsequent steps and other relief sought by the Applicants in these CCAA proceedings.
8. All of the parties affected by the Consent Order have consented to it. The Consent Order has no effect on the rights of sub tenants. Accordingly, all interested parties have been notified of and consented to the relief sought herein.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 12 day of
June, 2015.



Commissioner for Taking Affidavits

Asim Iqbal



CARL J.F. STETLER

TAB A

EXHIBIT "A"

FORM 4

NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **KPMG Inc.**, in its capacity as court-appointed Monitor, and **75 Eglinton Avenue East Limited Partnership**.

Take notice that

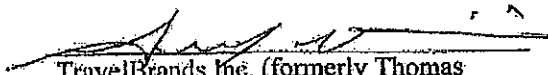
1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **TravelBrands Inc. (formerly Thomas Cook Canada Inc.)** ("TravelBrands") were commenced on the 27th day of May, 2015.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

Title of Agreement	Company	Counter Party	Dated
Lease	TravelBrands Inc. (formerly Thomas Cook Canada Inc.)	75 Eglinton Avenue East Limited Partnership	3/28/2008
The First Lease Amending Agreement	TravelBrands Inc. (formerly Thomas Cook Canada Inc.)	75 Eglinton Avenue East Limited Partnership	4/23/2009

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between TravelBrands and 75 Eglinton Avenue East Limited Partnership arising out of or relating to the premises leased by TravelBrands at 75 Eglinton Avenue, Toronto, Ontario, in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").


3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 28th day of June, 2015, being 30 days after the day on which this notice has been given.

Dated at Toronto, Ontario, on May 29, 2015.


Travel Brands Inc. (formerly Thomas
Cook Canada Inc.)

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on May 29, 2015.


Monitor's representative
responsible for the proceedings



WAYBILL NUMBER: 1650
 SERVICE: P D R S ON RET
 NUMBER OF PIECES: 1

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Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1A8

OSLER

75 Eglinton Avenue East Limited Partnership
 1 Richmond Street West
 Suite 701
 Toronto, ON M5H 3W4

Received
 by Courier
 @ 3:29 pm
 Friday May 29/15

For delivery only

- SAME DAY OVERNIGHT
 RUSH BASIC

COURIER		P
REGISTERED MAIL		
NO SIGNATURE REQUIRED		
MATTER#	1163346	
NAME	Dave Rosenblatt	
TKID#	1	

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Lawyers for 75 Eglinton Avenue East Limited Partnership

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.) MONDAY, THE 15TH DAY
)
JUSTICE NEWBOULD) OF JUNE, 2015

**IN THE MATTER OF THE COMPANIES' CREDITORS
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TRAVELBRANDS INC. (the "Applicant")**

ORDER

THIS MOTION, made by the Applicant for an Order amending the Initial Order made by this Honourable Court in this proceeding dated May 27, 2015 was heard this day at 330 University Avenue, in the City of Toronto.

UPON READING the Affidavit of Carl J.F. Stetler sworn on June 12, 2015 and upon being advised of the consent of 75 Eglinton Avenue East Limited Partnership (the "**Landlord**");

1. **THIS COURT ORDERS** that, notwithstanding the provisions of the Initial Order including, without limitation, paragraph 15 of the Initial Order, the Landlord is authorized and empowered (but not obligated), without providing notice to or requiring the consent of the Applicant, to:

- (a) offer premises in the building owned by the Landlord located at 75 Eglinton Avenue East, Toronto (the "**Building**") and leased by the Landlord to the

Applicant pursuant to the Lease dated March 28, 2008 (as amended, the "Lease") to prospective tenants;

- (b) market the premises in the Building to prospective tenants, subject to the rights of the sub tenants in the Building;
- (c) retain, in the Landlord's sole and unfettered discretion, a broker or brokers to market the premises in the Building;
- (d) have complete and unfettered access to the Building, subject to the rights of the sub tenants in the Building; and
- (e) deal with the existing sub tenants in the Building as the Landlord sees fit, including, without limitation, collecting rent (which will be credited to the Applicant's rent obligations under the Lease), negotiate and enter into extensions, expansions or reductions of those sub leases that the Landlord and the sub tenant in question agree upon.

2. **THIS COURT ORDERS** that the Applicant shall forthwith provide to the Landlord and its broker or brokers all written communications and expressions of interest received by the Applicant and all materials, presentations and documents delivered to prospective sub tenants. The Applicant shall also forthwith provide to the Landlord and its broker or brokers all communications and written expressions of interest that the Applicant may receive after the date of this Order from prospective sub tenants in respect of the Building or the Lease.

3. **THIS COURT ORDERS** that the Applicant shall not be entitled access to the Building and shall not remove any property, assets or undertaking from the Building without the prior written consent of the Landlord.

4. **THIS COURT ORDERS** that, in respect of the Building and without releasing the Applicant of its obligations under the Lease and this Order, all sub tenants of the Applicant who, prior to the date of the Initial Order, paid rent to the Applicant are hereby directed to pay rent directly to the Landlord from and after the effective date of the disclaimer of the Lease in accordance with such payment instructions as may be agreed upon between the Landlord and such sub tenant. The Applicant shall forthwith pay to the Landlord all payments received from sub tenants on account of rent from and after the effective date of the disclaimer of the Lease.

5. **THIS COURT ORDERS** that the making of this Order and the exercise by the Landlord of its rights under this Order shall be without prejudice to the rights of the Landlord pursuant to the Lease and the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "CCAA"), including, without limitation, the right to oppose any subsequent steps taken or relief sought by the Applicant in these CCAA proceedings (except for in respect of the Applicant's disclaimer of the Lease).

6. **THIS COURT ORDERS** that the making of this Order and the exercise by the Landlord of its rights under this Order shall be without prejudice to and not diminish the Applicant's obligation to comply with the Lease and discharge its obligations under the Lease, including paying rent and maintaining insurance in accordance with the Lease, in accordance with paragraph 9 of the Initial Order.

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