

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF **MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

**IN THE MATTERS OF THE NOTICE OF
INTENTION OF:**

N°: **500-11- 051625-164**

AMERICAN APPAREL CANADA RETAIL INC.

- and -

N°: **500-11- 051624-167**

**AMERICAN APPAREL CANADA WHOLESALE
INC.**

Debtors/Petitioners

- and -

KPMG INC.

Trustee/Interim Receiver

**SECOND MOTION FOR AN EXTENSION OF TIME TO FILE A PROPOSAL
(Section 50.4(9) of the *Bankruptcy and Insolvency Act* (the “BIA”))**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR THE
REGISTRAR, SITTING IN COMMERCIAL DIVISION IN AND FOR THE JUDICIAL
DISTRICT OF MONTREAL, THE DEBTORS RESPECTFULLY SUBMIT THE
FOLLOWING:**

1. INTRODUCTION

1. American Apparel Canada Retail Inc. (“**AA Retail**”) and American Apparel Canada Wholesale Inc. (“**AA Wholesale**”; collectively with AA Retail, the “**Debtors**”) seek an order extending the deadline for the filing of a proposal, which will expire on January 23, 2017, until March 9, 2017 (the “**Extended Stay Period**”), for the reasons more fully explained below.
2. The initial deadline to file a proposal was set to expire on December 9, 2016 and was extended to January 23, 2017 by order of this Court granted on December 9, 2016, which appears in the Court record and is communicated for ease of reference as **Exhibit R-1**.

2. FACTUAL BACKGROUND

3. The Debtors are the wholly-owned Canadian affiliates of American Apparel LLC (“**AA Parent**”), and together carried out the retail and wholesale clothing business operated in Canada under the “American Apparel” brand.
4. On or about November 8, 2016, AA Parent, American Apparel, LLC, American Apparel (USA), LLC, American Apparel Retail Inc., American Apparel Dyeing & Finishing, Inc., KCL Knitting, LLC, and Fresh Air Freight, Inc. (collectively, the “**U.S. Affiliates**”) advised the Debtors that the U.S. Affiliates would cease providing all stock and inventory to the Petitioners and cease providing all support functions, effective immediately.
5. On November 9, 2016, the Debtors filed a Notice of Intention to File a Proposal pursuant to section 50.4 of the BIA (the “**Notice**”). KPMG Inc. is the notice of intention trustee (in such capacity, the “**Trustee**”).
6. However, due to the U.S. Affiliates ceasing to provide administrative support, the Debtors are unable to complete the proposal proceedings without assistance.
7. Accordingly, on November 11, 2016, the Debtors sought and obtained an order appointing KPMG Inc. as interim receiver pursuant to section 47.1 of the BIA (KPMG Inc. in such capacity, the “**Interim Receiver**”), as appears from the Court record and from the copy of the order dated November 11, 2016 communicated for ease of reference as **Exhibit R-2**.
8. A detailed description of the Debtors’ pre-proposal operations, finances, creditors and reliance on the U.S. Affiliates is contained in the Debtors’ Motion to Appoint the Interim Receiver dated November 10, 2016, which appears in the Court record and is communicated for ease of reference as **Exhibit R-3**.

3. OPERATIONS SINCE FILING OF NOI

9. A general discussion of the Debtors’ operations appears in the *Report of the Trustee pursuant to Section 50.4(7) of the BIA and the Report of the Interim Receiver pursuant to Section 47.1(2) of the BIA* dated December 8, 2016, which appears in the Court record and is communicated for ease of reference as **Exhibit R-4**. Additionally, for the purposes of the present Motion, the following facts regarding the Debtors’ operations since the filing of the NOI are relevant.

3.1 Statutory Compliance

10. As described in the Debtors’ First Motion for an Extension of Time to File a Proposal dated December 6, 2016 (the “**First Motion**”), the Debtors, with the assistance of the Trustee and the Interim Receiver, filed the cash flow statements and reports required by Section 50.4(2) of the BIA covering the period from November 9, 2016 to December 10, 2016.

11. Previously, on November 18, 2016, the Debtors, with the assistance of the Trustee, had filed the initial cash flow statement as required by section 50.4 within 10 days of the filing of the Notice, which covered the period from December 4, 2016 to January 28, 2017.

3.2 Liquidation of Inventory

12. Since its appointment, the Interim Receiver has been conducting a coordinated liquidation of inventory across Canada.
13. As already appears in the Court record, AA Retail neither owns nor holds a licence to use any material intellectual property, but is presently using the "American Apparel" brand name pursuant to a "no action" letter from the applicable owners of the intellectual property, enabling the Debtors' to continue to use the intellectual property until February 9, 2017.
14. With the assistance of its agent Merchant Retail Solutions ULC (an affiliate of Hilco Merchant Resources LLC) ("**MRS**"), the Interim Receiver has facilitated inventory sales at each of the Debtor's retail locations, utilizing the Debtor's existing staff, at discounted prices.
15. Sales during the Christmas shopping season were stronger than expected, and the majority of the Debtors' inventory has now been liquidated. It is anticipated by the Interim Receiver and MRS that the remainder of the Debtors' inventory will be liquidated by the end of January, 2017 or the first week of February, 2017.
16. The orderly liquidation has yielded approximately \$7,829,000 million in gross receipts for the period from November 11, 2016 through January 14, 2017, as will be set out in greater detail in the Debtors' cash-flow statement and Trustee's Second Report, to be subsequently filed in the Court record by the Trustee (the "**Trustee's Second Report**"). These recoveries are in excess of the Interim Receiver's and MRS's initial projections.

3.3 Leases

17. The Interim Receiver has analyzed the profitability and costs associated with each of the Debtors' locations. Based on this analysis, which took into consideration, *inter alia*, inventory levels, the Interim Receiver has deemed it appropriate to disclaim certain retail leases.
18. As discussed in the First Motion, eight of the Debtors' 28 locations were determined to be unnecessary following the Christmas shopping season. Notices of lease disclaimers in respect of these eight retail locations in Edmonton, Calgary, Toronto, Kingston, Montreal and Laval were delivered on December 1, 2016, with effect as of December 31, 2016. These eight leases have accordingly now been disclaimed and the Interim Receiver has vacated the premises.

19. Disclaimers of an additional 16 retail leases were sent to landlords by the Interim Receiver on January 5, 2017, with effect as of February 4, 2017 and a disclaimer in respect of a seventeenth lease was sent on January 10, with effect as of February 9, 2017 . Notice was also given to employees of these 17 locations that their employment would be terminated on January 31, 2017.
20. Disclaimers of the three remaining retail leases, with respect to stores located in Vancouver, Montreal and Toronto, were sent by the Interim Receiver to landlords on January 11, 2017. These disclaimers will have effect on February 10, 2017, but the Interim Receiver has reserved the right to extend occupancy on notice to the applicable landlords if necessary to liquidate any inventory that may remain on February 10, 2017. Extended occupancy rent will be paid on a *per diem* basis. Employees at these final three locations will be given notices of termination once the Interim Receiver has determined the date on which their employment will end.
21. The Interim Receiver has confirmed that, to date, no landlord has objected to a notice of disclaimer, however counsel for Cadillac Fairview has notified the Interim Receiver that it disputes the quantum of December and January rent that was paid by the Interim Receiver to Cadillac Fairview in respect of a total of four leases (three of which were terminated at the end of December). At the request of Cadillac Fairview's counsel, the Interim Receiver has agreed to create a reserve for the disputed amount (the "**Cadillac Fairview Reserve**"), pending a consensual resolution of the dispute or further order of this Court.

3.4 Liquidity Through Extended Stay Period

22. The Interim Receiver has paid all January 2017 rent in respect of all of the Debtors' retail locations that it continues to occupy (with the exception of the Cadillac Fairview Reserve). The Debtors currently have sufficient liquidity to fund occupation rent and salaries through the Extended Stay Period, as set out in further detail in the Trustee's Second Report.
23. The Debtors' operating expenses are expected to be reduced during the Extended Stay Period, with the outstanding lease disclaimers taking effect at the beginning of February and the corresponding terminations of employment reducing lease and salary payments substantially.

4. U.S. AFFILIATE INSOLVENCY PROCEEDINGS

24. On November 14, 2016, the U.S. Affiliates filed for protection under Chapter 11 of Title 11 of the United States Code (the "**Chapter 11 Proceedings**"), and implemented a sales process for all of their assets.
25. The Chapter 11 Proceedings sale process culminated in an auction on January 9, 2017 in which Gildan Activewear SRL ("**Gildan**") was the successful bidder. The sale to Gildan was approved by the US Court on January 12, 2017.

26. The sale of the U.S. Affiliates' business to Gildan will include its inventory and intellectual property, but will not include any retail stores, or any Canadian assets or operations of the Debtors. Consequently, though the Interim Receiver had been undertaking the Canadian liquidation while at the same time preserving the most valuable retail stores in case such stores formed part of a bid in the Chapter 11 Proceedings, the Interim Receiver now considers that it is appropriate to proceed with the complete liquidation of all Canadian operations. The Interim Receiver has commenced this process, further to these latest developments, as discussed above.
27. The closing of the sale to Gildan and resolution of claims in the Chapter 11 Proceedings is of material relevance to the Debtors and their creditors. As described in the Interim Receiver Motion, AA Retail is a creditor of the U.S. Affiliates. This claim has yet to be formally assessed in the Chapter 11 Proceedings, and it is unclear at this time whether there will be sufficient funds for a distribution to be made on account of it.

5. EXTENSION OF TIME

28. As described in detail in the Interim Receiver Motion, the Debtors' have only two secured creditors, each in respect of specific equipment, and substantially all of the Debtors' unsecured indebtedness is owed to the U.S. Affiliates.
29. The Debtors are current on their payment of sales taxes, occupation rent and salaries (subject to the Cadillac Fairview Reserve), and have the liquidity to fund ongoing sales taxes, occupation rent and salaries through the Extended Stay Period.
30. Moreover, the Interim Receiver, a court appointed officer, has control over the Debtors' business and operations, including their receipts and disbursements.
31. The Debtors require an extension of the stay of proceedings under the BIA to enable the Interim Receiver to complete the liquidation of the Debtors' remaining inventory and assess claims against the Debtors, which have not yet been formally made.
32. It is anticipated that the majority of claims will be from landlords, in respect of leases that have been disclaimed by not yet terminated. Many landlords are thus not yet able to calculate claims, but will be in a position to do so in the Extended Stay Period, if granted.
33. It is accordingly submitted that there are no creditors that will be materially prejudiced by the requested stay extension.
34. The Interim Receiver expect that once the liquidation has been completed and claims against the Debtors made and assessed, the Debtors, with the assistance of the Trustee and Interim Receiver, will be in a position to make a distributing

proposal to creditors. Such a proposal, in the absence of all claims being made, is not currently possible, but it is expected that the requested extension of the stay of proceedings would enable the Debtors to formulate a plan.

6. CONCLUSIONS

35. Neither the Debtors nor the Trustee are aware of any creditor that will be materially prejudiced should the extension be granted.
36. The Debtors have acted in good faith and with due diligence.
37. The Debtors will likely be able to make a viable proposal if the extension is granted.
38. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Second Motion for an Extension of Time to File a Proposal*;

EXTEND until March 9, 2017 the delay granted to American Apparel Canada Retail Inc. and American Apparel Canada Wholesale Inc. to file their proposal with the Official Receiver.

THE WHOLE, with costs to follow.

Montréal, January 18, 2017

Blake, Cassels & Graydon LLP

BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Debtors/Petitioners
American Apparel Canada Retail Inc. and American
Apparel Canada Wholesale Inc.

AFFIDAVIT

I, the undersigned, BENNETT NUSSBAUM, having a place of business at 1550 rue Metcalfe, Suite 1500, Montreal, QC, H3A 1X6, solemnly declare the following:

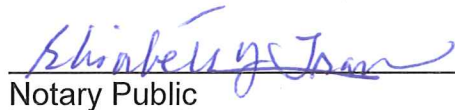
1. I am the sole officer of the Debtors herein;
2. All the facts alleged in the *Second Motion for an Extension of Time to File a Proposal* are true.

AND I HAVE SIGNED:



BENNETT NUSSBAUM

Solemnly affirmed before me at Los Angeles,
this 18th day of January, 2017



Notary Public



NOTICE OF PRESENTATION

TO: Attached Service List

TAKE NOTICE that the Debtors' *Second Motion for an Extension of Time to File a Proposal* will be presented for decision before the Superior Court, Commercial Division, sitting in and for the District of Montreal on **Monday, January 23, 2017 at 8:45 a.m.**, at 1 Notre-Dame Street East in Montreal, Quebec in room 16.10, or as soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, January 18, 2017

Blake, Cassels & Graydon LLP

BLAKE, CASSELS & GRAYDON LLP

Attorneys for the Debtors/Petitioners

American Apparel Canada Retail Inc. and American
Apparel Canada Wholesale Inc.

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**SECOND MOTION FOR AN EXTENSION OF
TIME TO FILE A PROPOSAL, AFFIDAVIT AND
NOTICE OF PRESENTATION AND EXHIBITS
R-1 TO R-4
(Section 50.4(9) B.I.A.)**

ORIGINAL

The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script font.

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