

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN

**RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS INC., RIOCAN HOLDINGS (OAKVILLE PLACE) INC., RIOCAN PROPERTY SERVICES TRUST, RC HOLDINGS II LP, RC NA GP 2 TRUST and RIOCAN FINANCIAL SERVICES LIMITED**

Applicants

- and -

**2455034 ONTARIO LIMITED PARTNERSHIP, 2455034 ONTARIO INC., 2491815 ONTARIO LIMITED PARTNERSHIP, 2491815 ONTARIO INC., 2491816 ONTARIO LIMITED PARTNERSHIP, 2491816 ONTARIO INC., 2681842 ONTARIO LIMITED PARTNERSHIP, 2681845 ONTARIO INC., and 2681842 ONTARIO INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**FACTUM OF RIOCAN REAL ESTATE INVESTMENT TRUST**

(Approval of Yorkdale Sublease Agreement – January 14, 2026)

January 2, 2026

**Goodmans LLP**

Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**Robert J. Chadwick** LSO#: 35165K  
rchadwick@goodmans.ca

**Joseph Pasquariello** LSO#: 38390C  
jpasquariello@goodmans.ca

**Julie Rosenthal** LSO #: 41011G  
jrosenthal@goodmans.ca

**Andrew Harmes** LSO#: 73221A  
aharmes@goodmans.ca

Tel: 416.979.2211

Fax: 416.979.1234

Lawyers for RioCan Real Estate Investment  
Trust

## TABLE OF CONTENTS

<b>I.</b>	<b>OVERVIEW .....</b>	<b>1</b>
<b>II.</b>	<b>FACTS.....</b>	<b>3</b>
	A. Background .....	3
	B. The Receiver Enters into the Proposed Sublease .....	4
	C. The Proposed Sublease.....	5
	D. The Fairweather Parent Is an Experienced Retail Operator and Has Extensive Commercial Dealings with RioCan and with Oxford .....	7
	E. Planned Operation of the Proposed <i>Ailes</i> store at Yorkdale .....	8
	F. Oxford's Ever-Changing Explanation as to its Refusal to Consent to the Sublease.....	10
<b>III.</b>	<b>ISSUE .....</b>	<b>14</b>
<b>IV.</b>	<b>LAW AND ARGUMENT .....</b>	<b>14</b>
	A. Preservation of Value is a Fundamental Purpose of Canadian Insolvency Law... ..	14
	B. The Court Has the Authority to Approve the Sublease Notwithstanding Oxford's Refusal to Consent .....	15
	C. This Court Should Exercise its Discretion to Approve the Sublease .....	15
	(i) The Fairweather Parent Meets the Head Lease Requirements for a Subtenant.....	15
	(ii) Oxford's Refusal to Consent is Unreasonable .....	20
	(iii) It is Just and Equitable for this Court to Approve the Sublease.....	24
<b>V.</b>	<b>CONCLUSION AND RELIEF REQUESTED.....</b>	<b>25</b>

## SCHEDULES

Schedule A - List of Authorities

Schedule B - Statutory References

## I. OVERVIEW

1. RioCan-HBC Limited Partnership (or the “**JV**”), through HBC YSS 1 Limited Partnership (“**YSS 1**”), is the tenant under a long-term ground lease (the “**Head Lease**”) for 300,000 square feet of space at Yorkdale. The Head Lease extends to the year 2142 at the tenant’s option, and has a number of other provisions that are very favourable to the tenant. However, due to HBC’s insolvency and subsequent liquidation, the Yorkdale premises are now vacant and the Head Lease is consequently at risk of termination. That termination would cause a material loss of value to the JV and its stakeholders.
2. To preserve the Head Lease and its value, the Receiver has entered into a proposed sublease with Fairweather Ltd. (the “**Fairweather Parent**”), who will operate a department store in the premises under the *Ailes* banner in compliance with the Head Lease’s use clause. The proposed sublease also includes a covenant by the Fairweather Parent to comply with all of the applicable terms of the Head Lease.
3. In addition, RioCan has committed to ensuring that rent continues to be paid under the Head Lease for so long as it has a material economic interest in preserving the Head Lease, which is the sole collateral for the \$75 million leasehold mortgage loan advanced by RBC to YSS 1 that RioCan guaranteed (and has subsequently acquired from RBC).<sup>1</sup>
4. However, Oxford, as the landlord, refuses to consent to the sublease.
5. Oxford’s reasons for refusing have shifted over time. Initially, Oxford indicated that it lacked sufficient information about the Fairweather Parent and about the proposed *Ailes* store. However, following receipt of evidence served by the Receiver and RioCan, which established that Oxford has a long history with the Fairweather Parent, Oxford switched gears and took the position that the *Ailes* store would be “budget and value-oriented” and too “down-market” for Yorkdale’s “world-class luxury retail mix”.<sup>2</sup>

---

<sup>1</sup> Affidavit of Dennis Blasutti sworn October 12, 2025 (the “**First Blasutti Affidavit**”), at para. 81(c), Record of RioCan Real Estate Investment Trust (“**RioCan Record**”), Tab 1, p. [A1136](#).

<sup>2</sup> Affidavit of Nadia Corrado sworn November 13, 2025 (the “**First Corrado Affidavit**”), at paras. 6-7 and 17, Responding Motion Record, Vol 1, Tab 1, pp. [F1828](#) and [F1831](#).

6. Then, following receipt of reply materials served by the Receiver and RioCan, which established that Yorkdale's retailers are not exclusively (or even predominantly) luxury stores and that the proposed *Ailes* store would be comparable to the existing *Simons* department store, Oxford changed position yet again. Now, Oxford insists that its opposition to the sublease "is not based on the fact that Fairweather is not a luxury retail operator", but rather is because the Fairweather Parent is not a "first-class retail operator".<sup>3</sup>

7. This ever-shifting narrative exposes the weakness at the core of Oxford's position. When the evidence as a whole is considered, it becomes apparent that Oxford's true motivation lies in its desire to rid itself of an onerous lease.

8. As is discussed more fully below, it is submitted that the Court should approve the proposed sublease as fair, reasonable and appropriate, including for the following reasons:

- (a) The *Ailes* store will meet the Head Lease's use requirement.
- (b) The Fairweather Parent has covenanted to abide by the Head Lease.
- (c) The *Ailes* store will occupy a market position similar to that occupied by *Simons* and will be appropriate for the overall character of the Yorkdale mall.
- (d) The Fairweather group of companies has the necessary expertise and operational and commercial arrangements in place to operate the *Ailes* store.
- (e) The Fairweather Parent is a creditworthy counterparty.
- (f) If the Court does not approve the proposed sublease, a material loss of value to the detriment of stakeholders of the JV would result.
- (g) Approval of the sublease will benefit multiple JV stakeholders, including RioCan, BMO and other lenders to the JV entities.
- (h) The Receiver will remain as tenant under the Head Lease, and RioCan will

---

<sup>3</sup> Sur-Reply Affidavit of Nadia Corrado sworn November 28, 2025 ("Corrado Sur-Reply Affidavit"), at para. 18, Sur-Reply Motion Record, Tab 1, p. [F2796](#).

continue to ensure payment of rent, meaning that there is no increased credit risk to Oxford.

- (i) The proposed sublease does not alter any of Oxford's contractual rights.

## II. FACTS

### A. Background

9. HBC originally entered into the Head Lease in 2002. The Head Lease is a long-term ground lease extending to 2142 at the tenant's option, with favourable rent, use controls, expansion rights, and "no build" restrictions.<sup>4</sup>

10. In 2015, when RioCan and HBC created the JV, one of the real estate assets that HBC contributed to the JV was its interest in the Head Lease. To that end, HBC assigned the Head Lease to itself in its capacity as general partner of YSS 1 and then subleased the premises to itself in its own capacity.<sup>5</sup>

11. The JV's audited financial statements for 2023 ascribed a value of \$211 million to the Head Lease, \$178.3 million of which is attributable to the department store building.<sup>6</sup>

12. The Head Lease provides that the department store building "is owned by the Tenant", but that, upon termination, the building transfers to Oxford for no additional consideration.<sup>7</sup>

13. Over the years, various lenders advanced funds to the JV entities, with the loans being secured against certain of the JV's real estate assets. Those debt obligations total approximately \$838 million and are owed to various secured lenders. They include a \$75 million loan

---

<sup>4</sup> See ss. [3.01](#) (Extensions), [4.00](#) (Amount of Rent for Leased Premises), [14.00](#) (Tenant's Use Controls), [14.01](#) (Prohibited Uses), [14.03](#) (Exclusives), [20.00\(5\)](#) (Expansion and Alteration of Shopping Centre) and definition of "No Build Area", [23.00](#) (Tenant's Signs), and [25.13](#) (Ownership of Tenant Department Store) of the Head Lease, Exhibit "B" to the First Blasutti Affidavit, RioCan Record, Tab 1B, p. [A1254](#).

<sup>5</sup> It should be noted that Oxford unsuccessfully opposed that assignment. See *HBC v. OMERS*, [2015 ONSC 4671](#), and *Hudson's Bay Company v. OMERS Realty Corporation*, [2016 ONCA 113](#).

<sup>6</sup> Affidavit of Dennis Blasutti sworn November 21, 2025 (the "**Second Blasutti Affidavit**"), at para. 9, RioCan Record, Tab 2, p. [A1420](#).

<sup>7</sup> See s. 25.13 of the Head Lease, Exhibit "B" to the First Blasutti Affidavit, RioCan Record, Tab 1B, p. [A1300](#).

originally advanced by RBC that is secured by YSS 1's interest in the Head Lease.<sup>8</sup> RioCan guaranteed that loan and has now acquired it from RBC.<sup>9</sup>

14. HBC commenced CCAA proceedings on March 7, 2025 and, soon afterwards, began a liquidation process. When it became apparent that marketing efforts were not going to result in any transactions in respect of the real estate assets held by the JV (such as the Head Lease), RioCan obtained an order appointing FTI as the Receiver over the JV's assets, in order to preserve and maximize value of those assets for the benefit of the JV's stakeholders.<sup>10</sup>

15. The Head Lease requires the tenant to "continuously operate" as a "single integrated traditional retail department store". It also provides that the landlord can terminate the Head Lease, if the tenant ceases to operate for a period of 12-months.<sup>11</sup> HBC exited the Yorkdale premises as of June 15, 2025.<sup>12</sup> Accordingly, the Receiver proceeded on the basis that June 14, 2026 was the deadline for a new tenant to commence operations.

## **B. The Receiver Enters into the Proposed Sublease**

16. As part of HBC's CCAA proceedings, efforts were made to market the Head Lease and HBC's rights in the sublease. Those efforts were not successful.<sup>13</sup>

17. Once the Receiver was appointed in the within proceedings, it undertook further targeted marketing in respect of the Yorkdale property and the Head Lease, including contacting Oxford to inquire as to whether Oxford was interested in pursuing, e.g., a consensual termination of the Head Lease. RioCan also engaged in discussions to that end with Oxford, during which RioCan indicated that Oxford should pay "at least a hundred million dollars" for the surrender of the

---

<sup>8</sup> [RioCan Real Estate Investment Trust et al v. RioCan-HBC Limited Partnership et al \(June 3, 2025\), Ont SCJ \[Commercial List\], Court File No. CV-25-00744295-00CL \(Endorsement of Justice Osborne\)](#), at paras. 25-27 [*Receivership Application Endorsement*].

<sup>9</sup> Second Blasutti Affidavit, at para. 81, RioCan Record, Tab 2, p. [A1441](#).

<sup>10</sup> First Blasutti Affidavit, at para. 48, RioCan Record, Tab 1, p. [A1124](#); see also, [Receivership Application Endorsement](#), at paras. 28-31, and 35.

<sup>11</sup> See s. 6.00 and s. 6.01 of the Head Lease, Exhibit "B" to the First Blasutti Affidavit, RioCan Record, Tab 1B, pp. [A1270-A1271](#).

<sup>12</sup> Fifth Report of the Receiver, at para 16, Motion Record of the Receiver, Tab 2, p. [E1845](#).

<sup>13</sup> First Blasutti Affidavit, at para. 39-40, RioCan Record, Tab 1, p. [A1122](#).

Head Lease and two other leases.<sup>14</sup> Oxford declined these overtures.<sup>15</sup>

18. However, certain other parties did express an interest in the Yorkdale property. Ultimately, the Receiver determined that the best option was to enter into a sublease with the Fairweather Parent for operation of an *Ailes*-branded department store.<sup>16</sup>

19. The sublease – and the operation of the *Ailes* department store – will preserve the Head Lease as an asset of the JV, and the payment of rent pursuant to the sublease will help satisfy the rental obligations under the Head Lease. Without the sublease, the Receiver will be left with no choice but to disclaim the Head Lease, since the current tenant – YSS 1 – cannot operate a department store in the premises.<sup>17</sup> The disclaimer of the Head Lease would be significantly prejudicial to stakeholders of the JV, being (i) RioCan, (ii) the Bank of Montreal, in respect of a syndicated \$105 million term credit facility extended to the JV that is guaranteed by YSS 1, and (iii) other secured lenders who may have deficiency claims.<sup>18</sup>

### **C. The Proposed Sublease**

20. The proposed sublease is in accordance with and subject to the terms of the Head Lease. Section 2 of the sublease provides that the Receiver “demises and subleases to the Subtenant the Subleased Premises for the Sublease Term in accordance with and subject to the terms, covenants and conditions contained in this Sublease and in the Head Lease.”<sup>19</sup> In addition, section 3 states:

It is the express intention of the parties that this Sublease is to be  
on the same terms and conditions as contained in the Head Lease

---

<sup>14</sup> First Blasutti Affidavit, at paras. 50-58, RioCan Record, Tab 1, pp. [A1125-A1127](#); Blasutti Cross-Examination, at qq. 140-146, Cross-Examination Brief of the Receiver, Tab 3, p. [E2532](#).

<sup>15</sup> First Blasutti Affidavit, at paras. 50-58, RioCan Record, Tab 1, pp. [A1125-A1127](#).

<sup>16</sup> First Blasutti Affidavit, at para. 61, RioCan Record, Tab 1, p. [A1128](#); Fifth Report of the Receiver, at para. 27, Motion Record of the Receiver, Tab 2, p. [E1847](#).

<sup>17</sup> Fifth Report of the Receiver, at para. 33, Motion Record of the Receiver, Tab 2, p. [E1850](#).

<sup>18</sup> First Blasutti Affidavit, at para. 7, RioCan Record, Tab 1, p. [A1111](#); Fifth Report of the Receiver, at para. 63(c), Motion Record of the Receiver, Tab 2, p. [E1855](#).

<sup>19</sup> See s. 2 of the sublease, Exhibit “F” to the First Blasutti Affidavit, RioCan Record, Tab 1F, p. [A1382](#).

save and except as provided for herein.<sup>20</sup>

21. Similarly, by section 10(i) of the sublease, the Fairweather Parent covenants to perform all of the obligations of the tenant under the Head Lease and to be bound by all of its provisions.<sup>21</sup> And, by section 10(ii), the Fairweather Parent covenants “not to do or omit to do any act which would cause a breach of the Sublandlord’s obligations as tenant under the Head Lease”.<sup>22</sup>

22. As noted above, those obligations include the continuous operation in the premises of a “single integrated traditional retail department store”, as such a “traditional” store has evolved over time.<sup>23</sup>

23. The sublease provides for a fixturing period of up to six months from the delivery of vacant possession, during which the Fairweather Parent can prepare the premises for opening.<sup>24</sup>

24. From the completion of the fixturing period until May 31, 2029, the sublease provides for the Fairweather Parent to pay gross rent equal to the greater of \$1 million annually and 12% of “Gross Receipts” from all business conducted on the premises. Thereafter, the Fairweather Parent is obliged to pay all amounts that the Receiver owes to Oxford under the Head Lease.<sup>25</sup>

25. The Fairweather Parent is self-funded and does not rely on financial institutions for its operations. It has advised that it does not expect to require any third-party financing to support its obligations under the proposed sublease.<sup>26</sup>

---

<sup>20</sup> See ss. 2 and 3 of the sublease, Exhibit “F” to the First Blasutti Affidavit, RioCan Record, Tab 1F, p. [A1382](#).

<sup>21</sup> See s. 10(i) of the sublease, Exhibit “F” to the First Blasutti Affidavit, RioCan Record, Tab 1F, p. [A1385](#).

<sup>22</sup> See s. 10(ii) of the sublease, Exhibit “F” to the First Blasutti Affidavit, RioCan Record, Tab 1F, p. [A1386](#).

<sup>23</sup> See s. 6.00 of the Head Lease, Exhibit “B” to the First Blasutti Affidavit, RioCan Record, Tab 1B, p. [A1270](#).

<sup>24</sup> See s. 4 of the sublease, Exhibit “F” to the First Blasutti Affidavit, RioCan Record, Tab 1F, p. [A1382](#).

<sup>25</sup> See ss. 7(a) and 7(b) of the sublease, Exhibit “F” to the First Blasutti Affidavit, RioCan Record, Tab 1F, p. [A1383](#).

<sup>26</sup> First Blasutti Affidavit at para. 67, RioCan Record, Tab 1, p. [A1129](#).

26. The sublease has a total term (including extensions) of approximately 50 years.<sup>27</sup> However, the sublease also grants certain termination rights, which provide the Receiver with the flexibility to pursue a more valuable transaction if one arises.<sup>28</sup>

**D. The Fairweather Parent Is an Experienced Retail Operator and Has Extensive Commercial Dealings with RioCan and with Oxford**

27. The Fairweather Parent, which is the counterparty to the sublease, is the main corporate entity through which the Fairweather group of companies (collectively, the “**Fairweather Group**”) conducts its business.<sup>29</sup> This business includes the operation of over 100 retail stores across Canada under several banners, including *Fairweather*, *International Clothiers (INC)*, *Designer Depot*, *Wyrrth*, *Zellers*, and *Les Ailes de la Mode*.<sup>30</sup> Two of these brands (Designer Depot and Zellers) operate under a department store model. Moreover, between 2005 and 2017, the Fairweather Group operated department stores under the *Les Ailes de la Mode* brand.<sup>31</sup>

28. The Fairweather Group has a team of experienced head office employees with all of the expertise needed to operate a retail department store on an integrated basis.<sup>32</sup> And its founder and president, Isaac Benitah, has over 30 years of experience in the Canadian retail industry.

29. The Fairweather Group also has an extensive operational and logistics network that will support the new *Ailes* store. This includes buying offices and warehouses, and extensive existing merchandising and supply relationships that provide Fairweather with access to various brands and goods, including many brands that were previously carried by HBC.<sup>33</sup>

30. The Fairweather Parent is and has been a tenant of properties owned or operated by many

---

<sup>27</sup> See s. 5(a) of the sublease, Exhibit “F” to the First Blasutti Affidavit, RioCan Record, Tab 1F, p. [A1382](#); s. 3(b) of the sublease amending agreement, enclosure C to the Written Interrogatories of the Receiver, Responding Motion Record, Vol 3, Tab 5C, p. [F2570](#).

<sup>28</sup> See [s. 13\(a\) and \(b\)](#) and [s. 14](#) of the sublease, Exhibit “F” to the First Blasutti Affidavit, RioCan Record, Tab [1F](#).

<sup>29</sup> First Blasutti Affidavit at para. 12, RioCan Record, Tab 1, p. [A1112](#).

<sup>30</sup> First Blasutti Affidavit at paras. 10 and 64, RioCan Record, Tab 1, pp. [A1112](#) and [A1129](#).

<sup>31</sup> First Blasutti Affidavit at para. 76, RioCan Record, Tab 1, p. [A1134](#); Second Blasutti Affidavit at paras. 47, 49 and 54, RioCan Record, Tab 2, pp. [A1430-A1431](#).

<sup>32</sup> Second Blasutti Affidavit at para. 53, RioCan Record, Tab 2, p. [A1431](#).

<sup>33</sup> Second Blasutti Affidavit, at paras. 64 and 66, RioCan Record, Tab 2, pp. [A1434-A1435](#).

major Canadian landlords, including both RioCan and Oxford.<sup>34</sup> RioCan has a relationship with the Fairweather Group spanning more than 25 years, encompassing more than 35 leases. Currently, RioCan and the Fairweather Group are party to three leases: (i) for a *Fairweather* store at Georgian Mall, (ii) for a *Labels* store at Shoppers World Brampton, and (iii) for a *Labels* store at Tanger Outlets Cookstown.<sup>35</sup> The Fairweather Group has consistently performed its lease obligations to RioCan: with the exception of two payment defaults in 2010 arising out of a dispute regarding the calculation of percentage rent, there have never been any defaults.<sup>36</sup>

31. The Fairweather Group also has a lengthy and continuing relationship with Oxford. The Fairweather Parent is the tenant under three active leases with Oxford: (i) for a *Fairweather/Stockhomme* store at Scarborough Town Centre, pursuant to a tenancy that dates back to 1997;<sup>37</sup> (ii) for a *Fairweather* store at Upper Canada Mall pursuant to a lease dated November 11, 2002;<sup>38</sup> and (iii) for a *Designer Depot* store at the Kingsway Garden Mall, which tenancy began in July 2025.<sup>39</sup>

#### **E. Planned Operation of the Proposed *Ailes* store at Yorkdale**

32. As noted above, the Head Lease requires the operation of a single integrated traditional retail department store in the premises.<sup>40</sup> The Fairweather Parent intends to do so under the *Ailes* banner. The departments at the *Ailes* store will include men's apparel, women's apparel, children's apparel, footwear, housewares and home décor, accessories, and confectionary. This

---

<sup>34</sup> First Blasutti Affidavit at para. 75(c)(i)-(iii), RioCan Record, Tab 1, p. [A1133](#).

<sup>35</sup> First Blasutti Affidavit at para. 64, RioCan Record, Tab 1, p. [A1129](#). RioCan has shifted its business focus over the last number of years away from enclosed mall properties to open air properties, which has contributed to a reduction in the number of RioCan leases with the Fairweather Parent and its affiliates. See RioCan's response to undertaking #8 in respect of the Blasutti cross-examination, Cross-Examination Brief of the Receiver, Tab 3A, p. [E2729](#).

<sup>36</sup> First Blasutti Affidavit, at para. 65, RioCan Record, Tab 1, p. [A1129](#); Blasutti Cross-Examination, at p. 5, Cross-Examination Brief of the Receiver, Tab 3, p. [E2501](#).

<sup>37</sup> First Corrado Affidavit, at para. 30(b) and at Exhibit "L", Responding Motion Record, Vol 1, Tab 1, p. [F1835](#) and [Tab 1L](#); and Corrado Cross-Examination, at qq. 24-25, Cross-Examination Brief of the Receiver, Tab 1, p. [E2408](#).

<sup>38</sup> First Corrado Affidavit, at para. 30(a) and at Exhibit "J", Responding Motion Record, Vol 1, Tab 1, p. [F1834](#) and [Tab 1J](#).

<sup>39</sup> First Corrado Affidavit, at para. 32, Responding Motion Record, Vol 1, Tab 1, p. [F1836](#).

<sup>40</sup> See s. 6.00 of the Head Lease for the operating covenant, Exhibit "B" to the First Blasutti Affidavit, RioCan Record, Tab 1B, p. [A1270](#).

range of departments is consistent with that offered by other department store operators. Indeed, it is in excess of the number of departments offered by *Simons* at its Yorkdale store, which Oxford and its expert agree is a department store.<sup>41</sup>

33. A prominent housewares and home décor department will be a core traffic driver at the store, leveraging the Fairweather Group's expertise operating *Wyrth* stores. It will be located at the main-level entrance and will feature hardlines (e.g., cookware) and softlines (e.g., bedding). The children's department will also be located on the main level.<sup>42</sup> All departments will be run on an integrated basis, with a central point-of-sale system and no third-party subleasing.<sup>43</sup>

34. The *Ailes* banner will be positioned at a mid- to high-end department store, carrying a mix of branded and private-label merchandise, and offering a higher-quality of goods than the Fairweather Group's more value-oriented banners.<sup>44</sup>

35. In addition to the Yorkdale store, the Fairweather Parent has finalized arrangements with another major Canadian landlord (Primaris) to open two other *Ailes* department stores in former HBC locations in Québec City and Montréal. Openings are targeted for the first half of 2026.<sup>45</sup>

36. The Fairweather Parent has been actively leveraging supplier relationships to secure prominent branded product for its store. Committed brands include Reebok, Chaps, Steve Madden, DKNY, Tahari, Billabong, French Connection, Laura Ashley, Geoffrey Beene, and Perry Ellis, many of which are the same as, or similar to, brands previously offered by HBC.<sup>46</sup> The *Ailes* store will offer a mix of 50/50 branded vs. private-label products. That compares favourably with *Simons*, which is reported to carry 70% private label product.<sup>47</sup>

---

<sup>41</sup> Second Blasutti Affidavit, at para. 17-18, RioCan Record, Tab 2, pp. [A1422-A1423](#); see also, Lee Cross-Examination, qq. 30-32, Cross-Examination Brief of the Receiver, Tab 2, p. [E2494](#).

<sup>42</sup> Second Blasutti Affidavit, at para. 31-32, RioCan Record, Tab 2, p. [A1427](#).

<sup>43</sup> Second Blasutti Affidavit, at para. 31, RioCan Record, Tab 2, p. [A1427](#).

<sup>44</sup> Second Blasutti Affidavit at para. 20-21, RioCan Record, Tab 2, pp. [A1423-A1424](#).

<sup>45</sup> Second Blasutti Affidavit, at para. 22, RioCan Record, Tab 2, p. [A1424](#); see also, Corrado Cross- Examination, qq. 339-343, Cross-Examination Brief of the Receiver, Tab 1, p. [E2481](#).

<sup>46</sup> Second Blasutti Affidavit, at para. 25-26, RioCan Record, Tab 2, pp. [A1425-A1426](#); Expert report of Jamie Tate (the "**Tate Report**") at p. 7, Reply Record of the Receiver, Tab 2A, p. [E2382](#).

<sup>47</sup> Second Blasutti Affidavit, at para. 29, RioCan Record, Tab 2, p. [A1426](#).

37. The Fairweather Parent projects approximately \$5 million in an initial inventory investment for the *Ailes* store at Yorkdale (which is considered sufficient to fully stock and operate the store) and over \$500,000 in fixtures. These amounts will be funded from cash on hand and ongoing operations.<sup>48</sup>

**F. Oxford’s Ever-Changing Explanation as to its Refusal to Consent to the Sublease**

38. Under the Head Lease, Oxford’s consent to a sublease may not be unreasonably withheld, so long as the proposed subtenant is “creditworthy and a suitable replacement tenant, and sufficiently experienced and competent in operating” an integrated traditional department store.<sup>49</sup>

39. Oxford was provided with a copy of the proposed sublease on August 19, 2025.<sup>50</sup> On September 4, 2025, Oxford’s counsel sent a letter to the Receiver’s counsel requesting information about the Fairweather Parent. The information sought included such basic information as a corporate profile, a list of directors and officers, banking details, credit checks, and a list of current and former stores<sup>51</sup> – information which Oxford would be expected already to have given its lengthy commercial relationship with the Fairweather Group. Oxford’s counsel did not provide any explanation for the information requests, and merely stated:

[W]e make certain information requests as we and our client consider the matter.<sup>52</sup>

40. On October 1, 2025, the Receiver responded, noting that “Fairweather is a known counterparty to Oxford” and sought confirmation that Oxford was not consenting to the proposed sublease.<sup>53</sup> The next day, Oxford provided that confirmation<sup>54</sup> and the Receiver proceeded to

---

<sup>48</sup> Second Blasutti Affidavit, at paras. 61-63, RioCan Record, Tab 2, pp. [A1433-A1434](#).

<sup>49</sup> See s. 21.00 of the Head Lease, Exhibit “B” to the First Blasutti Affidavit, RioCan Record, Tab 1B, p. [A1290](#).

<sup>50</sup> First Blasutti Affidavit, at para. 83(a)-(b), RioCan Record, Tab 1, pp. [A1135-A1136](#).

<sup>51</sup> See letter from Oxford’s counsel dated September 4, 2025, Exhibit “G” to the First Blasutti Affidavit, RioCan Record, Tab 1G, p. [A1397](#).

<sup>52</sup> See letter from Oxford’s counsel dated September 4, 2025, Exhibit “G” to the First Blasutti Affidavit, RioCan Record, Tab 1G, p. [A1397](#).

<sup>53</sup> First Blasutti Affidavit, at para. 83(d) and Exhibit “H”, RioCan Record, Tab 1, p. [A1137](#) and Tab 1H, p. [A1404](#).

<sup>54</sup> First Blasutti Affidavit, at para. 83(e) and Exhibit “I”, RioCan Record, Tab 1, p. [A1137](#) and Tab 1I, p. [A1407](#).

serve its motion materials. At the time those materials were served, Oxford had not provided any explanation as to why it was refusing to consent to the proposed sublease, nor had it articulated any concerns either with the Fairweather Parent as a proposed subtenant or with the operation of an *Ailes* store in the former HBC premises.<sup>55</sup>

41. That explanation was not provided until Oxford served its responding motion materials, which asserted that the Fairweather Parent was an unacceptable tenant because its store would not fit with Yorkdale’s “world-class luxury retail mix”.<sup>56</sup> Oxford’s affiant spoke of Oxford having executed “a comprehensive, long-term strategy to transform Yorkdale Mall into a leading luxury retail destination” and of having “curated a premium tenant mix” that “elevated the mall’s brand positioning”.<sup>57</sup> She described Yorkdale as a “consistent and cohesive luxury retail destination”, with a carefully designed “luxury environment”.<sup>58</sup>

42. Oxford’s witness expressed the concern that the stores operated by the Fairweather Group are “firmly positioned in the budget and value-oriented segment of the retail market” and that any store operated by the Fairweather Parent would not “reflect the scale, aesthetic, or market positioning expected of an anchor tenant at Yorkdale”.<sup>59</sup>

43. Having now been advised, for the first time, that Oxford’s concerns centred on whether an *Ailes* store would be sufficiently upmarket for Yorkdale’s supposedly “world-class luxury retail mix”,<sup>60</sup> RioCan and the Receiver delivered reply evidence establishing that Yorkdale in fact has “a wide range of retailers at various price points”, including three of its anchor tenants who are “decidedly mid-market retailers”, and a large number of other retailers who offer merchandise at “affordable price points” (such as Zara, H&M, Mango, Garage, Aldo, etc.).<sup>61</sup>

44. Indeed, Oxford has recently expressed a willingness to welcome Walmart – a decidedly

---

<sup>55</sup> First Blasutti Affidavit, at para. 84, RioCan Record, Tab 1, p. [A1137](#).

<sup>56</sup> First Corrado Affidavit, at para. 17, Responding Motion Record, Vol 1, Tab 1, p. [F1831](#).

<sup>57</sup> First Corrado Affidavit, at para. 18, Responding Motion Record, Vol 1, Tab 1, p. [F1831](#).

<sup>58</sup> First Corrado Affidavit, at para. 68 and 76, Responding Motion Record, Vol 1, Tab 1, pp. [F1848](#) and [F1850](#).

<sup>59</sup> First Corrado Affidavit, at para. 52, Responding Motion Record, Vol 1, Tab 1, p. [F1842](#).

<sup>60</sup> First Corrado Affidavit, at para. 17, Responding Motion Record, Vol 1, Tab 1, p. [F1831](#).

<sup>61</sup> Tate Report, at p. 7 and 9, Reply Record of the Receiver, Tab 2A, pp. [E2382](#) and [E2384](#).

non-luxury retailer – as an anchor tenant at Yorkdale. As explained by Ian Putnam, the former President and CEO of HBC:

During [discussions held in the fall of 2024], Oxford representatives indicated that they viewed Walmart as a satisfactory replacement tenant for the premises at the Yorkdale shopping centre that were then occupied by Hudson’s Bay. As a result of the discussions, I believed that Oxford would accept Walmart as an occupant of the Yorkdale premises.<sup>62</sup>

45. In addition, the reply evidence established that, far from being a “budget” retailer, the proposed *Ailes* store would operate in the “mid- to high-end market range”, carrying brands that are the same as, or similar to, brands previously offered by HBC and that are “comparable to the quality and price points of merchandise offered in the *Simons* store at Yorkdale”.<sup>63</sup>

46. Faced with evidence demonstrating that all of Oxford’s purported concerns were unfounded, Oxford shifted its litigation strategy yet again. In proposed sur-reply evidence,<sup>64</sup> Oxford’s affiant now insisted that, contrary to what was stated in her first affidavit, Oxford’s objection to the sublease was “not based on the fact that Fairweather is not a luxury retailer”. Instead, she claimed (for the first time) that the true reason for Oxford’s objection to the sublease was that the Fairweather Parent “is not a first-class retail operator”.<sup>65</sup>

47. However, this explanation, like the now-discarded “luxury mall” explanation, does not stand up to scrutiny. As noted above, Oxford has a long-standing commercial relationship with the Fairweather Parent and Oxford’s witness agreed on cross-examination that all of its tenants, including, presumably, the Fairweather Parent, are first-class retailers:

Q. Does Oxford lease any of its properties to second class retailers?

---

<sup>62</sup> Affidavit of Ian Putnam sworn November 21, 2025 (the “**Putnam Affidavit**”), at para. 3, Reply Record of the Receiver, Tab 3, pp. [E2395-E2396](#).

<sup>63</sup> Second Blasutti Affidavit, at paras. 20 and 26-27, RioCan Record, Tab 2, pp. [A1423](#) and [A1425-A1426](#); Tate Report, at p. 7, Reply Record of the Receiver, Tab 2A, p. [E2382](#).

<sup>64</sup> The propriety of this evidence is disputed by RioCan.

<sup>65</sup> Corrado Sur-Reply Affidavit, at para. 18, Sur-Reply Motion Record, Tab 1, p. [F2796](#).

A. No.<sup>66</sup>

48. Moreover, the existing contractual arrangements between Oxford and the Fairweather Parent require the Fairweather Parent to “operate its business in a first-class manner”.<sup>67</sup> At no time over 20+ years has Oxford ever alleged a breach of that obligation:

Q. . . . [A]t no point in that entire duration of [the Scarborough Town Centre] tenancy has Oxford ever alleged to Fairweather that it’s failing to operate in a first-class manner, is that right?

A. That’s my understanding.

. . .

Q. And at no point in the duration of Fairweather’s tenancy at Upper Canada Mall has Oxford ever complained that Fairweather is failing to run a first-class store, has it?

A. Not to my knowledge.<sup>68</sup>

49. As is discussed more fully below, it is submitted that the real reason for Oxford’s objection to the proposed sublease is collateral to the contractual purpose for which the consent right was given. Put simply, Oxford wants to terminate the Head Lease. As Oxford’s witness candidly admitted, “Landlords always like to control their own real estate.”<sup>69</sup>

50. Termination of the Head Lease would result in a substantial economic windfall to Oxford, at the expense of the JV’s stakeholders. That windfall would include the reversion to Oxford of the department store building, valued at approximately \$178 million, over 100 years in advance of the lease expiring on its terms.<sup>70</sup> In addition, Oxford would obtain complete control over the land in question, free of the many restrictions imposed by the terms of the Head Lease.

51. All of this would deprive the JV and its stakeholders of material value that would otherwise be payable in respect of the surrender of such a lengthy lease on such a valuable site.<sup>71</sup>

---

<sup>66</sup> Corrado Cross-Examination, q. 163, Cross-Examination Brief of the Receiver, Tab 1, p. [E2438](#).

<sup>67</sup> Corrado Cross-Examination, qq. 172-174, Cross-Examination Brief of the Receiver, Tab 1, p. [E2441](#).

<sup>68</sup> Corrado Cross-Examination, qq. 175 and 178, Cross-Examination Brief of the Receiver, Tab 1, pp. [E2442-E2443](#).

<sup>69</sup> Corrado Cross-Examination, q. 220, Cross-Examination Brief of the Receiver, Tab 1, p. [E2452](#).

<sup>70</sup> Second Blasutti Affidavit, at para. 9, RioCan Record, Tab 2, p. [A1420](#).

<sup>71</sup> Second Blasutti Affidavit, at para. 10, RioCan Record, Tab 2, p. [A1420](#).

The Receiver has noted several previous lease surrender transactions in which payments from landlords range between \$27 million and \$400 million.<sup>72</sup> Additionally, Oxford's witness confirmed that, in 2013, the company "purchased leases" (i.e., paid for surrenders of leases) for *Sears* stores at the Yorkdale and Square One malls.<sup>73</sup>

52. It is the desire to obtain this economic windfall that lays behind Oxford's refusal to consent to the sublease.

### III. ISSUE

53. The issue in this motion is whether the Court should approve the sublease with the Fairweather Parent and grant the requested ancillary relief (e.g., granting relief from any default under the Head Lease caused by the appointment of the Receiver or by HBC's insolvency).

### IV. LAW AND ARGUMENT

#### A. Preservation of Value is a Fundamental Purpose of Canadian Insolvency Law

54. Receivership proceedings initiated under the BIA are remedial in nature and are intended to protect, preserve and maximize value, and to provide a fair and reasonable outcome for creditors. As explained in *Callidus Capital Corp.*, the "overarching remedial objectives" of Canadian insolvency law include "preserving and maximizing the value of a debtor's assets".<sup>74</sup>

55. Similarly, the Ontario Court of Appeal stated:

The purpose of a receivership is to "enhance and facilitate the preservation and realization of the assets for the benefit of creditors"... The receiver's "primary task is to ensure that the highest value is received for the assets so as to maximise the return to the creditors".<sup>75</sup>

---

<sup>72</sup> Fifth Report of the Receiver, at para. 31, Motion Record of the Receiver, Tab 2, p. [E1848](#).

<sup>73</sup> Corrado Cross-Examination, qq. 222-224, Cross-Examination Brief of the Receiver, Tab 1, p. [E2452](#).

<sup>74</sup> *9354-9186 Quebec Inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) at para. 40.

<sup>75</sup> *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at para. 73.

**B. The Court Has the Authority to Approve the Sublease Notwithstanding Oxford’s Refusal to Consent**

56. The Supreme Court has recognized “the broad scope of authority” that has been conferred on the bankruptcy court by virtue of section 183 of the BIA.<sup>76</sup> And section 243 of the BIA confers equally broad authority on a supervising court in relation to a receivership, authorizing a court to appoint a receiver and, “if it considers it just and convenient to do so”, to direct the receiver to “take any other action that the court considers advisable.”<sup>77</sup>

57. The broad authority granted to the Court under the BIA provides the Court with jurisdiction to approve the sublease notwithstanding Oxford’s refusal to consent.

58. The reasoning of this Court in the HBC Ruby Liu decision is instructive. In that case, the Court held that, when considering whether to order the assignment of a lease, it was not constrained by whether or not the landlord’s refusal to consent was reasonable. Such an approach would be unduly restrictive.<sup>78</sup> Rather, the Court held that it must consider the reasonableness of the proposed transaction taking into account the interests of all affected stakeholders, which may be “very different from what is reasonable from the perspective only of one particular landlord in the context of its lease.”<sup>79</sup>

**C. This Court Should Exercise its Discretion to Approve the Sublease**

*(i) The Fairweather Parent Meets the Head Lease Requirements for a Subtenant*

59. The starting point in the analysis is the terms of the Head Lease. As noted above, section 21.00 of the Head Lease provides that the Landlord’s consent to a proposed sublease shall “not be unreasonably withheld so long as the transferee is creditworthy and a suitable replacement tenant and one who is sufficiently experienced and competent in operating a

---

<sup>76</sup> *Sam Lévy & Associés Inc. v. Azco Mining Inc.*, [2001 SCC 92](#) at para. 38.

<sup>77</sup> *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3, s. 243\(1\)\(c\)](#).

<sup>78</sup> In *Re Hudson’s Bay Company*, [2025 ONSC 5998](#), at paras. 36-42, and 43(i) and (j) [*HBC Lease Assignment Decision*]. See also Torys LLP, “[HBC adds an important chapter to the law on forced assignments of contracts and ipso facto clauses](#)” (October 2025), online: Torys.

<sup>79</sup> [HBC Lease Assignment Decision](#), at para. 39.

business of the type required to be operated in the Tenant Department Store.”<sup>80</sup>

60. The Fairweather Parent meets each of the specified criteria.

The Fairweather Parent is a Creditworthy Counterparty

61. The Fairweather Parent is the main corporate entity through which the Fairweather Group conducts its retail business (which includes over 100 retail stores across Canada). It is entirely self-funded. It does not rely on financial institutions to finance its operations and does not expect to require any third-party financing in connection with the sublease.<sup>81</sup> The sublease obligations – most notably, the annual rent and the cost of inventory and fixturing – will all be paid by the Fairweather Parent through cash on hand and receipts from operations.<sup>82</sup>

62. In addition, the costs to open the *Ailes* store will be reduced because the Fairweather Group already has all necessary core operational and logistics functions in place. It has existing supplier relationships, warehouse storage, buying capabilities and head-office employees, all of which will be used for the proposed *Ailes* store.<sup>83</sup>

63. By any measure, the Fairweather Parent, with its significant assets and operations, is a creditworthy entity that can meet the financial obligations of the sublease.

64. Moreover, Oxford’s own actions demonstrate that its honest view is that the Fairweather Parent is a creditworthy counterparty. The Fairweather Parent is currently party to four leases in respect of Oxford-owned and/or operated properties. This includes an agreement finalized only recently for a *Designer Depot* department store at a mall in Edmonton. Not only did Oxford consider Fairweather sufficiently “creditworthy” to enter into that contract, it did not even require any detailed financial information in support of the tenancy.<sup>84</sup>

---

<sup>80</sup> See Section 21.00 of the Head Lease, attached as Exhibit “B” to the First Blasutti Affidavit, RioCan Record, Tab 1B, p. [A1290](#).

<sup>81</sup> First Blasutti Affidavit, at para. 67, RioCan Record, Tab 1, p. [A1129](#); Written Interrogatories of the Receiver at p. 9, Responding Motion Record, Vol 3, Tab 5A, p. [F2520](#).

<sup>82</sup> Second Blasutti Affidavit, at paras. 61-63, RioCan Record, Tab 2, pp. [A1433-A1434](#).

<sup>83</sup> Second Blasutti Affidavit, at paras. 64 and 66-67, RioCan Record, Tab 2, pp. [A1434-A1435](#).

<sup>84</sup> First Blasutti Affidavit, at paras. 68-69, RioCan Record, Tab 1, p. [A1130](#).

65. Accordingly, it is clear that the Fairweather Parent qualifies as a “creditworthy” subtenant in accordance with section 21.00 of the Head Lease.

The Fairweather Parent is a Suitable Replacement Tenant and *Ailes* is a Suitable Replacement Store

66. It does not appear to be disputed that the proposed *Ailes* department store will operate as a “single integrated traditional retail department store” in compliance with the use restriction imposed by section 6.00 of the Head Lease. The key “department store” aspects of that operation are as follows.

67. First, the range of products to be carried by *Ailes*, organized by category, will be consistent with those carried by a modern retail department store. The store will comprise multiple departments – men’s apparel, ladies’ apparel, children’s apparel, footwear, housewares, home décor, accessories, and confectionary items. Indeed, it will have more departments than *Simons*, which Oxford and its expert agree qualifies as a department store.<sup>85</sup>

68. Second, all of the departments in the store will be run on an integrated basis, with a central point-of-sale system and no third-party subleasing.<sup>86</sup>

69. Third, the quality of products will position the *Ailes* store to be the type of department store permitted under the Head Lease. The store will offer a broad mix of merchandise at various price points in the mid- to high-end range. Merchandise will generally be split 50/50 between well-known brands, including brands that were carried by HBC or are comparable, and private label goods.<sup>87</sup> The *Ailes* store will not be a junior department store, specialty store, specialty department store or any other form of store that is not permitted under the Head Lease.

70. Notwithstanding compliance with the Head Lease’s requirement regarding the operation of a “single integrated traditional retail department store”, Oxford still takes the position that the Fairweather Parent would not be a “suitable replacement tenant”. As noted above, the purported

---

<sup>85</sup> Second Blasutti Affidavit, at para. 18, RioCan Record, Tab 2, p. [A1423](#); Lee Cross-Examination, qq. 30-32, Cross-Examination Brief of the Receiver, Tab 2, p. [E2494](#).

<sup>86</sup> Second Blasutti Affidavit, at para. 31, RioCan Record, Tab 2, p. [A1427](#).

<sup>87</sup> Second Blasutti Affidavit, at paras. 26-27, and 29, RioCan Record, Tab 2, pp. [A1425-A1426](#).

explanations for Oxford's position have varied over time, and none has any merit.

71. Initially, Oxford indicated that it was unfamiliar with the Fairweather Parent, requesting information such as its "corporate profile" and "shareholder register" and "banking details".<sup>88</sup> However, that position was discarded in the face of evidence establishing that Oxford and the Fairweather Group have a longstanding commercial relationship.<sup>89</sup>

72. At that point, Oxford advanced a new explanation – namely, that the stores operated by the Fairweather Parent are "downmarket" and that the *Ailes* store would not be a suitable fit for Yorkdale's "world-class luxury retail mix".<sup>90</sup> However, that explanation too was shown to be unfounded, as demonstrated by evidence showing that:

- (a) Yorkdale has "a wide range of retailers at various price points", including three of its anchor tenants who are "decidedly mid-market retailers", and a large number of other retailers who offer merchandise at "affordable price points";<sup>91</sup>
- (b) Oxford has recently expressed a willingness to welcome Walmart as an anchor tenant at Yorkdale;<sup>92</sup> and
- (c) far from being "downmarket", the proposed *Ailes* store would operate in the "mid- to high-end market range",<sup>93</sup> carrying brands that are the same as, or similar to, brands previously offered by HBC and that are "comparable to the quality and price points of merchandise offered by *Simons*".<sup>94</sup>

73. In the face of that evidence, Oxford once again changed its story and now asserts that the

---

<sup>88</sup> See letter from Oxford's counsel dated September 4, 2025, Exhibit "G" to the First Blasutti Affidavit, RioCan Record, Tab 1G, p. [A1397](#).

<sup>89</sup> First Blasutti Affidavit, at para. 68, RioCan Record, Tab 1, p. [A1130](#); First Corrado Affidavit, at para. 30(a)-(b), Responding Motion Record, Vol 1, Tab 1, pp. [F1834-F1835](#); and Corrado Cross-Examination, at qq. 22-27, Cross-Examination Brief of the Receiver, Tab 1, p. [E2408](#).

<sup>90</sup> First Corrado Affidavit, at para. 7 and 17, Responding Motion Record, Vol 1, Tab 1, pp. [F1828](#) and [F1831](#).

<sup>91</sup> Tate Report, at pp. 7 and 9, Reply Record of the Receiver, Tab 2A, pp. [E2382](#) and [E2384](#).

<sup>92</sup> Putnam Affidavit, at para. 3, Reply Record of the Receiver, Tab 3, pp. [E2395-E2396](#).

<sup>93</sup> Second Blasutti Affidavit, at para. 20, RioCan Record, Tab 2, pp. [A1423-A1424](#).

<sup>94</sup> Second Blasutti Affidavit, at paras. 26-27, RioCan Record, Tab 2, pp. [A1425-A1426](#); Tate Report, at pp. 7, Reply Record of the Receiver, Tab 2A, p. [E2382](#).

Fairweather Parent is not suitable because it is not a “first-class retail operator”.<sup>95</sup> This too has been proven incorrect, as Oxford’s witness conceded on cross-examination that:

- (a) all of Oxford’s tenants (including, presumably, the Fairweather Parent) are “first-class” operators; and
- (b) never once in the 20+ years of their commercial relationship has Oxford ever alleged that the Fairweather Parent was in breach of lease obligations to operate in a “first-class” manner.<sup>96</sup>

74. Accordingly, notwithstanding Oxford’s assertions to the contrary, the evidence clearly establishes that the Fairweather Parent is a “suitable” replacement tenant and the proposed *Ailes* store is a “suitable” replacement store.

The Fairweather Parent is “Sufficiently Experienced and Competent”

75. The Fairweather Parent is a highly experienced retail operator, with all necessary operational experience and expertise to operate an integrated department store at Yorkdale:

- (a) the company has an established retail history in Canada, with over 100 stores currently operating across the country under various banners;<sup>97</sup>
- (b) it currently operates, and has in the past operated, certain of its brands under a department store model;<sup>98</sup>
- (c) it has extensive merchandising and supplier relationships, providing access to various brands and goods that would be required to stock a department store and that are appropriate for the proposed mid- to high-end department store;<sup>99</sup>

---

<sup>95</sup> Corrado Sur-Reply Affidavit, at para. 18, Sur-Reply Motion Record, Tab 1, p. [F2796](#).

<sup>96</sup> Corrado Cross-Examination, at qq. 172-178, Cross-Examination Brief of the Receiver, Tab 1, p. [E2441](#).

<sup>97</sup> First Blasutti Affidavit, at para. 64, RioCan Record, Tab 1, p. [A1129](#); Second Blasutti Affidavit, at paras. 35-52, RioCan Record, Tab 2, pp. [A1428-A1431](#).

<sup>98</sup> First Blasutti Affidavit, at para. 76, RioCan Record, Tab 1, p. [A1134](#). The company previously operated the *Ailes* brand as a department store, and currently operates department stores under the *Designer Depot* and *Zellers* brands.

<sup>99</sup> Second Blasutti Affidavit, at paras. 64-66, RioCan Record, Tab 2, pp. [A1434-A1435](#).

- (d) it has existing operational and logistics functions in place, including buying, warehouse and distribution capabilities, and the knowledge, ability, and operational resources to operate a retail department store;<sup>100</sup>
- (e) the company has recently finalized arrangements with a major Canadian landlord (Primaris) to operate *Ailes* department stores in former HBC locations in the Quebec City and Montreal areas;<sup>101</sup>
- (f) the company acquired the *Zellers* banner from HBC in August 2024 and, in less than three months, opened a 60,000 square foot *Zellers* department store;<sup>102</sup> and
- (g) the company has experience developing and executing marketing and promotional campaigns, including with respect to brand launches and store openings.<sup>103</sup>

76. For all of these reasons, there can be no serious doubt that the Fairweather Parent meets the requirements set out in the Head Lease for a subtenant.

(ii) *Oxford's Refusal to Consent is Unreasonable*

77. Although this Court should not be constrained by whether or not the proposed sublease is reasonable from Oxford's perspective, a consideration of that perspective may nevertheless assist in the determination of the overall reasonableness of the transaction.

78. The *Commercial Tenancies Act* provides that a landlord's consent to a sublease is not to be unreasonably withheld, unless the lease expressly provides otherwise. The *Act* further provides that a court may make an order approving the sublease where it is determined that the landlord is unreasonably withholding its consent.<sup>104</sup>

---

<sup>100</sup> Second Blasutti Affidavit, at paras. 64-66, RioCan Record, Tab 2, pp. [A1434-A1435](#).

<sup>101</sup> First Blasutti Affidavit, at para. 73(b), RioCan Record, Tab 1, p. [A1131](#); Second Blasutti Affidavit, at para. 22, RioCan Record, Tab 2, p. [A1424](#); and Corrado Cross-Examination, qq. 339-343, Cross-Examination Brief of the Receiver, Tab 1, p. [E2481](#).

<sup>102</sup> Second Blasutti Affidavit, at paras. 45 and 48, RioCan Record, Tab 2, pp. [A1429](#) and [A1430](#).

<sup>103</sup> Second Blasutti Affidavit, at paras. 67-68, RioCan Record, Tab 2, pp. [A1435-A1436](#).

<sup>104</sup> *Commercial Tenancies Act*, [R.S.O. 1990, c. L. 7, s. 23\(1\) and \(2\)](#).

79. A determination of reasonableness is a fact-specific inquiry that must take into account all of the relevant circumstances.<sup>105</sup> As explained by Lederman J. in *Suncor Energy Products Inc. v. 2054889 Ontario Ltd.*, the relevant circumstances may include:

- (a) the provisions of the lease that define and delimit the right of the tenant to sublet;
- (b) the likelihood of the proposed subtenant breaching its obligations under the lease;
- (c) the financial position of the subtenant;
- (d) the commercial realities of the marketplace; and
- (e) the economic impact of the sublease on the landlord.<sup>106</sup>

80. In the present case, those factors weigh in favour of a finding that Oxford's withholding of consent is unreasonable. As discussed at length above, the Fairweather Parent meets the requirements imposed by the Head Lease for a subtenant. Moreover, it has covenanted to honour all of the obligations contained in the Head Lease and has the requisite financial resources and operational experience to do so. In addition, with respect to the "commercial realities of the marketplace", there are very few remaining traditional department store operators in Canada. Tellingly, there is no suggestion from Oxford that some other operator would be preferable. Finally, with respect to the economic impact of the sublease on the landlord and its retail operations, the impact is expected to be positive, flowing from the re-tenanting of a sizable space by a commercial operator of a scale and market positioning consistent with those of other anchor tenants in the mall.

81. In addition, the reasonableness of Oxford's refusal to consent must be assessed in light of HBC's insolvency and these receivership proceedings. As noted above, the purpose of such proceedings includes the preservation of the debtor's assets for the benefit of stakeholders.<sup>107</sup> In

---

<sup>105</sup> *Rabin v. 2490918 Ontario Inc.*, [2023 ONCA 49](#) at para. [34](#); *Zellers Inc. v. Brad-Jay Investments Ltd.*, [2002 CanLII 42516](#) (ON SC), at para. [26](#) [*Zellers*]; *2197088 Ontario Limited v. Cadogan Corporation*, [2018 ONSC 3070](#) at para. [21](#) [*Cadogan*]; *1455202 Ontario Inc. v. Welbow Holdings Ltd.*, [2003 CanLII 10572](#) (ON SC) at para. [9](#).

<sup>106</sup> [2010 ONSC 6159](#), at para. [26](#).

<sup>107</sup> See *HBC Lease Assignment Decision*, at paras. [31](#) and [103](#), citing *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at para. [70](#).

that context, the relative importance of the proposed transaction to the receivership should be considered, along with whether Oxford's contractual rights will be respected.<sup>108</sup>

82. Again, those factors weigh in favour of a finding that Oxford's refusal to consent is unreasonable. The proposed sublease was the only viable transaction to emerge from two different marketing processes – one conducted as part of the HBC insolvency and the other conducted by the Receiver. As part of its process and in deciding to enter into the sublease (which leaves intact all of Oxford's rights under the Head Lease), the Receiver, a court-appointed officer whose business judgement is entitled to some deference,<sup>109</sup> considered:

- (a) the significant value of the Head Lease to the JV entities and their stakeholders,<sup>110</sup>
- (b) the terms of the Head Lease, including the Receiver's determination that the Fairweather Parent is a creditworthy entity, a suitable replacement for HBC and sufficiently experienced and competent in operating a retail department store,<sup>111</sup>
- (c) the Fairweather Parent's commitment and ability to operate an *Ailes* department store in compliance with the use clause of the Head Lease,<sup>112</sup>
- (d) the company's ability to open the store on the necessary timeline,<sup>113</sup>
- (e) the challenging market dynamics for marketing the Head Lease interest,<sup>114</sup>
- (f) the terms of the sublease, including the flexibility provided for the Receiver to enter into a further transaction, and<sup>115</sup>

---

<sup>108</sup> [HBC Lease Assignment Decision](#), at paras. 32, 34 and 43(n)(iv).

<sup>109</sup> [HBC Lease Assignment Decision](#), at para. 56.

<sup>110</sup> Fifth Report, at para. 66, Motion Record of the Receiver, Tab 2, p. [E1856](#).

<sup>111</sup> Fifth Report, at para. 40, Motion Record of the Receiver, Tab 2, p. [E1851](#).

<sup>112</sup> Fifth Report, at paras. 41-44, Motion Record of the Receiver, Tab 2, p. [E1852](#).

<sup>113</sup> Fifth Report, at para. 32(d), Motion Record of the Receiver, Tab 2, p. [E1849](#).

<sup>114</sup> Fifth Report, at para. 64, Motion Record of the Receiver, Tab 2, p. [E1856](#).

<sup>115</sup> Fifth Report, at para. 33, Motion Record of the Receiver, Tab 2, p. [E1850](#).

(g) the best interests of all stakeholders.<sup>116</sup>

83. Without the sublease and the operation of an integrated traditional department store that it entails, the Head Lease will be at serious risk of termination. Such termination would result in the loss of an asset that was valued by the joint venture at \$211 million.<sup>117</sup>

84. In addition, Oxford's refusal to consent to the sublease should be considered in light of other contractual arrangements that relate to the property. Specifically, in January 2024, in connection with RBC advancing the \$75 million loan to YSS 1, Oxford entered into the Leasehold Lender Agreement with RBC as the "Leasehold Mortgagee".<sup>118</sup> That agreement provides that, where there has been a default by the tenant that cannot be cured, Oxford is required at RBC's request to enter into a new lease with RBC on the same terms as the Head Lease for the balance of the Head Lease term. Thus, by the Leasehold Lender Agreement, Oxford agreed to constrain its own ability to use HBC's default as an opportunity to extinguish the Head Lease, thereby permitting RBC (or its assignee) to preserve the value of the Head Lease. That transaction also indicates that Oxford's primary concern in the case of HBC's default was to ensure payment of the rent obligation – a concern that is wholly answered in the present case, as Oxford has the benefit of the Receiver, supported by RioCan, as the party ultimately responsible for the tenant's obligations under the Head Lease.

85. Finally, a landlord may not refuse consent for reasons which are collateral to the terms of the governing lease:<sup>119</sup>

A landlord will not be acting reasonably if its grounds for refusal are seen to be simply opportunism.<sup>120</sup>

86. In the circumstances, Oxford's refusal to consent to the sublease can only be explained

---

<sup>116</sup> Fifth Report, at paras. 33, 61 and 63, Motion Record of the Receiver, Tab 2, pp. [E1850](#) and [E1855](#).

<sup>117</sup> Second Blasutti Affidavit, at para. 9, RioCan Record, Tab 2, p. [A1420](#).

<sup>118</sup> RioCan has now acquired this loan from RBC, including RBC's rights under the Leasehold Lender Agreement. The Leasehold Lender Agreement at section 16 provides that the agreement shall be binding upon and enure to the benefit of the parties' successors and assigns.

<sup>119</sup> *Cadogan; Zellers; Jo-Emma Restaurants Ltd. v. A. Merkur & Sons Ltd.* (1989), [7 R.P.R. \(2d\) 298](#) (Ont. Dist. Ct.); *Cowitz v. Siegel*, [\[1955\] 1 D.L.R. 68](#) (Ont. C.A.).

<sup>120</sup> *Zellers*, para. [29](#).

by a desire to opportunistically obtain a surrender of the Head Lease for no consideration – a purpose that is collateral to the terms of the Head Lease and, therefore, improper.

87. Notably, Oxford and HBC had been in discussions in the Fall of 2024 in an effort to address various Hudson’s Bay locations in Oxford-owned or operated properties. As explained by Ian Putnam, the former President and CEO of HBC, these discussions included potential amendments to the leases, the possible buy-out by Oxford of the leases, and the possible consensual assignment of existing leases to third-parties.<sup>121</sup> If the sublease is approved, Oxford can still pursue all of these options. However, if the sublease is not approved, a material loss of value would result to the detriment of stakeholders of the JV.

*(iii) It is Just and Equitable for this Court to Approve the Sublease*

88. Insolvency courts have recognized that the interests of creditors and contracting counterparties may diverge. In *Dundee*, Justice Dunphy observed that the insolvency of the debtor is a “godsend” and an “unexpected windfall” to counterparties looking to shed themselves of contractual constraints, which windfall comes at the expense of other stakeholders:

Of course, insolvency is not always a catastrophe for such counterparties. Sometimes it is a godsend. Assets locked into long-term contracts at advantageous prices may be freed up to allow the counterparty to re-price to current market. In such cases, the creditors are at risk of seeing the debtor lose critical assets while the counterparty receives an unexpected windfall...<sup>122</sup>

89. Thus, when considering existing contracts, such as the Head Lease herein, the courts will endeavour to “protect and enhance” the assets of a debtor estate.<sup>123</sup>

90. If the sublease is not approved and the Head Lease is terminated as a result, the benefit to Oxford and the corresponding detriment to the JV and its stakeholders will be substantial. In that case, the building, valued at \$178 million, will transfer to Oxford for no consideration. Oxford will no longer be subject to the various restrictions of the Head Lease, such as use controls,

---

<sup>121</sup> Putnam Affidavit, at para. 3, Reply Record of the Receiver, Tab 3, pp. [E2395-E2396](#).

<sup>122</sup> *Dundee Oil and Gas Limited (Re)*, [2018 ONSC 3678](#) at para. 28.

<sup>123</sup> *Ford Credit Canada Limited v. Welcome Ford Sales Ltd.*, [2010 ABQB 798](#) at para. 48.

expansion rights and the “no build area” restriction, all more than 100 years prior to the expiry of the lease’s prescribed contractual term. It will be free to renovate, release or redevelop the property as it sees fit, including by pursuing a significant new residential and commercial development, in respect of which Oxford has filed applications with the City of Toronto.<sup>124</sup>

91. The stakeholders whose interests will be adversely affected as a result consist of (i) RioCan, in respect of the \$75 million leasehold mortgage loan RBC originally advanced to YSS 1, (ii) the Bank of Montreal, as agent for itself and a syndicate of other lenders that advanced a \$105 million term credit facility to the JV that YSS 1 guaranteed, and (iii) other secured lenders of the JV who may have deficiency claims if their loans are not fully recovered.<sup>125</sup> It would be significantly prejudicial to these stakeholders if the Head Lease were terminated for no consideration. Preserving the Head Lease asset is therefore critical to the success of these receivership proceedings.

## **V. CONCLUSION AND RELIEF REQUESTED**

92. Court-approval of the sublease would be consistent with the remedial objectives of Canadian insolvency law. The sublease preserves the value of a material asset and provides the flexibility for future value accretive transactions. The proposed subtenant is creditworthy, experienced, and suitable, as required by the terms of the Head Lease. The Receiver’s business judgment has identified the sublease as the only viable path forward to avoid surrendering the Head Lease and the consequent material loss of value.

93. RioCan respectfully submits that approval of the sublease is fair, reasonable, and appropriate. RioCan therefore requests that the Court exercise its discretion to approve the sublease and to grant the ancillary relief sought.

---

<sup>124</sup> First Blasutti Affidavit, at para. 57, RioCan Record, Tab 1, p. [A1127](#).

<sup>125</sup> First Blasutti Affidavit, at paras. 7-8, RioCan Record, Tab 1, p. [A1111](#); and Fifth Report of the Receiver, at para. 63(c), Motion Record of the Receiver, Tab 2, p. [E1855](#).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

January 2, 2026

GOODMANS LLP

---

**Goodmans LLP**

**SCHEDULE A  
LIST OF AUTHORITIES**

<b>Tab</b>	<b>Description</b>
1.	<i>HBC v. OMERS</i> , <a href="#">2015 ONSC 4671</a>
2.	<i>Hudson's Bay Company v. OMERS Realty Corporation</i> , <a href="#">2016 ONCA 113</a>
3.	<a href="#">RioCan Real Estate Investment Trust et al v. RioCan-HBC Limited Partnership et al (June 3, 2025), Ont SCJ [Commercial List], Court File No. CV-25-00744295-00CL (Endorsement of Justice Osborne)</a>
4.	<i>9354-9186 Quebec Inc. v. Callidus Capital Corp.</i> , <a href="#">2020 SCC 10</a>
5.	<i>Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.</i> , <a href="#">2019 ONCA 508</a>
6.	<i>Sam Lévy &amp; Associés Inc. v. Azco Mining Inc.</i> , <a href="#">2001 SCC 92</a>
7.	<i>Re Hudson's Bay Company</i> , <a href="#">2025 ONSC 5998</a>
8.	Torys LLP, " <a href="#">HBC adds an important chapter to the law on forced assignments of contracts and ipso facto clauses</a> " (October 2025), online: Torys.
9.	<i>Rabin v. 2490918 Ontario Inc.</i> , <a href="#">2023 ONCA 49</a>
10.	<i>Zellers Inc. v. Brad-Jay Investments Ltd.</i> , <a href="#">2002 CanLII 42516</a> (ON SC)
11.	<i>2197088 Ontario Limited v. Cadogan Corporation</i> , <a href="#">2018 ONSC 3070</a>
12.	<i>1455202 Ontario Inc. v. Welbow Holdings Ltd.</i> , <a href="#">2003 CanLII 10572</a> (ON SC)
13.	<i>Suncor Energy Products Inc. v. 2054889 Ontario Ltd.</i> , <a href="#">2010 ONSC 6159</a>
14.	<i>Century Services Inc. v. Canada (Attorney General)</i> , <a href="#">2010 SCC 60</a>
15.	<i>Jo-Emma Restaurants Ltd. v. A. Merkur &amp; Sons Ltd.</i> (1989), <a href="#">7 R.P.R. (2d) 298</a> (Ont. Dist. Ct.)
16.	<i>Cowitz v. Siegel</i> , <a href="#">[1955] 1 D.L.R. 68</a> (Ont. C.A.)
17.	<i>Dundee Oil and Gas Limited (Re)</i> , <a href="#">2018 ONSC 3678</a>
18.	<i>Ford Credit Canada Limited v. Welcome Ford Sales Ltd.</i> , <a href="#">2010 ABQB 798</a>

**Lawyer's Statement (Rule 4.06.1(2.1)):**

I certify that I am satisfied as to the authenticity of every authority cited in the factum:



---

**Andrew Harmes**

**GOODMANS LLP**

Barristers & Solicitors

333 Bay Street, Suite 3400

Toronto, ON M5H 2S7

Lawyers for RioCan Real Estate Investment  
Trust

**SCHEDULE B  
STATUTORY REFERENCES**

**BANKRUPTCY AND INSOLVENCY ACT  
R.S.C. 1985, C. B-3, as amended**

**Courts vested with jurisdiction**

**183 (1)** The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

**Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

**COMMERCIAL TENANCIES ACT, R.S.O. 1990, C. L.7**

**Licence to assign not to be unreasonably withheld**

**23 (1)** In every lease made after the 1st day of September, 1911, containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that such licence or consent is not to be unreasonably withheld.

**Application to court where consent to assignment or subletting withheld**

**23 (2)** Where the landlord refuses or neglects to give a licence or consent to an assignment or sub-lease, a judge of the Superior Court of Justice, upon the application of the tenant or of the assignee or sub-tenant, made according to the rules of court, may make an order determining whether or not the licence or consent is unreasonably withheld and, where the judge is of opinion that the licence or consent is unreasonably withheld, permitting the assignment or sub-lease to be made, and such order is the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease is not a breach thereof.

**RIOCAN REAL ESTATE  
INVESTMENT TRUST, et al.**

Applicants

**2455034 ONTARIO LIMITED, et al.**

Respondents

Court File No. CV-25-00744295-00CL

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

Proceeding commenced at Toronto

**FACTUM OF RIOCAN REAL ESTATE  
INVESTMENT TRUST**  
(Approval of Yorkdale Sublease Agreement)

**GOODMANS LLP**

Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**Robert J. Chadwick** LSO#: 35165K  
rchadwick@goodmans.ca

**Joseph Pasquariello** LSO#: 38390C  
jpasquariello@goodmans.ca

**Julie Rosenthal** LSO #: 41011G  
jrosenthal@goodmans.ca

**Andrew Harmes** LSO#: 73221A  
aharmes@goodmans.ca

Tel: 416.979.2211  
Fax: 416.979.1234

Lawyers for RioCan Real Estate Investment Trust