

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

THE HONOURABLE MR.
JUSTICE HAINEY

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TUESDAY, THE 7th
DAY OF MAY 2019.



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 SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC.,
THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING
AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC.,
173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC.,
10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA
LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

Applicants

ORDER

THESE MOTIONS made by The Gap (Canada) Inc. and Old Navy (Canada) Inc. (collectively "**Gap**") and The Children's Place (Canada), LP ("**TCP**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for a declaration that the stay of proceedings (the "**Co-Tenancy Stay**") provided in paragraph 15 of the Initial Order of the Honourable Mr. Justice Hainey dated June 22, 2017, as amended and restated on July 13, 2017 (the "**Initial Order**") and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against The Gap and TCP, and other relief, was heard on October 16, 2018 at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Ketul Patel, sworn September 6, 2018, and the exhibits attached thereto, and the Affidavit of Matthew Irwin, sworn September 7, 2018, and the exhibits attached thereto, and on hearing the submissions of respective counsel for The Gap, TCP, the Applicants, the Monitor, and Bentall Kennedy (Canada) LP, QuadReal Property Group, Primaris Management Inc., Westcliffe Management Ltd., Tanurb (Festival Marketplace) Inc., and Cogir Real Estate (collectively the “**Moving Landlords**”), and on being advised that the Moving Landlords, who formerly opposed these Motions, have now withdrawn their opposition to these Motions, and on being advised that the Service List was served with the Motion Records of Gap and TCP:

1. **THIS COURT ORDERS** that, effective from and after May 1, 2019, the Co-Tenancy Stay is hereby no longer of any force or effect in accordance with its terms as against The Gap and TCP, and as a result, The Gap and TCP are entitled to exercise any rights *nunc pro tunc* that they may have against their landlords arising from the failure of any of the Applicants to operate in commercial shopping centres or other commercial properties (the “**Co-Tenant Rights**”), including in relation to the Gap leases appended hereto as Schedule “A” and the TCP leases appended hereto as Schedule “B”.

2. **THIS COURT FURTHER ORDERS** that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of the Co-Tenant Rights by Gap or TCP.

3. **THIS COURT FURTHER ORDERS** that there be no costs of these Motions.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 09 2019

PER / PAR: *RW*

CM Chiba

CM CHIBA, Registrar
Superior Court of Justice

393 UNIVERSITY AVE. 393 AVE. UNIVERSITY
6TH FLOOR 6E ÉTAGE
TORONTO, ONTARIO TORONTO, ONTARIO
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SCHEDULE "A"

LOCATION	LANDLORD	TENANT
Halifax Shopping Centre, Halifax, Nova Scotia	OPB Realty Inc.	Gap (Canada) Inc. o/a "Banana Republic"
Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Gap (Canada) Inc.
Quinte Mall, Belleville, Ontario	Quinte Mall Limited	Old Navy (Canada) Inc.
Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Old Navy (Canada) Inc.
Park Place Shopping Centre, Lethbridge, Alberta	Park Place Mall Holdings Inc.	Old Navy (Canada) Inc.
Cornwall Centre, Regina, Saskatchewan	Cornwall Centre Inc.	Gap (Canada) Inc. o/a "Gap/Gap Kids"
Landsdowne Place, Peterborough, Ontario	Landsdowne Mall Inc.	Gap (Canada) Inc. o/a "Gap Factory Store"

Stone Road Mall, Guelph, Ontario	Stone Road Mall Holdings Inc., Limited	Old Navy (Canada) Inc.
Pen Centre, St. Catharines, Ontario	OPB Realty Inc.	Old Navy (Canada) Inc.
Landsdowne Place, Peterborough, Ontario	Landsdowne Mall Inc.	Old Navy (Canada) Inc. o/a "Old Navy"
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap Kids/Baby"
Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Banana Republic"
Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Oshawa Centre,	Oshawa Centre Holdings	Gap (Canada) Inc. o/a

Oshawa, Ontario	Inc.	“Gap” and “Gap Kids”
Oshawa Centre, Oshawa, Ontario	Oshawa Centre Holdings Inc.	Old Navy (Canada) Inc.
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Banana Republic”
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Gap”
Northgate Shopping Centre, North Bay, Ontario	Hoopp Realty Inc.	Gap (Canada) Inc. o/a “Gap”
The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Gap (Canada) Inc.
The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Old Navy (Canada) Inc.
Sevenoaks Shopping Centre, Abbotsford, British Columbia	Sevenoaks S.C. Limited Partnership	Gap (Canada) Inc. o/a “Gap”

Schedule "B"

<u>TCP STORE #</u>	<u>TCP LOCATION</u>	<u>ADDRESS</u>	<u>LANDLORD</u>	<u>STATUS OF APPLICANTS' LEASE AT LOCATION</u>
3001	Pickering Town Centre	1355 Kingston Road, Pickering	OPB Realty Inc.	Disclaimed effective January 28, 2018
3015	Mall Champlain	2151 Lapiniere Boulevard, Brossard	Cominar Real Estate Investment Trust	Disclaimed effective January 22, 2018
3102	Carlingwood Shopping Centre	2165 Charling Avenue, Ottawa	OPB Realty Inc.	Disclaimed effective January 22, 2018
3103	Halifax Shopping Center	7001 Mumford Road, Halifax	OPB Realty Inc.	Disclaimed effective January 22, 2018
3105	St. Vital Centre	1225 St. Mary's Road, Suite 29, Winnipeg	OPB Realty Inc.	Disclaimed effective January 22, 2018
3108	Quinte Mall	390 North Front Street, Belleville	Hoopp Realty Inc.	Disclaimed effective January 28, 2018
3208	Cornwall Centre	1720 Hamilton Street, Regina	Cornwall Centre Inc.	Disclaimed effective November 16, 2017
3209	Midtown Plaza	1st Avenue & 20th Street, Saskatoon	Midtown Plaza Inc.	Disclaimed effective January 22, 2018
3218	Willowbrook Shopping Centre	19705 Frazer Highway, Langley	BCIMC Realty Corp - Willowbrook Shopping Centre	Disclaimed effective January 22, 2018
3226	The Pen Centre	221 Glendale Ave, St. Catharines	OPB Realty Inc.	Disclaimed effective January 28, 2018.
3260	Lansdowne Place	637 Lansdowne Street West, Peterborough	Lansdowne Place Inc.	Ceased operations January 28, 2018. Property sale approved as per Approval and Vesting Order dated August 20, 2018.

Schedule "B"

3261	Park Place	401 - 1st Avenue South, Lethbridge	Park Place Mall Holdings - Park Place Mall	Disclaimed effective January 22, 2018
3275	Aberdeen	W. Trans Canada Hwy. (Trans Canada 1 & Merritt Hwy. 5), Kamloops	Aberdeen Kamloops Mall Limited	Disclaimed effective November 16, 2017
3281	Cornwall Square	1 Water Street East, Cornwall	Charter Acquisitions Group, By Partners REIT	Disclaimed effective January 14, 2018
3290	Les Rivieres	2231 Des Récollets Blvd., Trois-Rivières, Québec	Cominar Real Estate Investment Trust / Fonds De Placement Immobilier Cominar	Ceased operations end of January 2018. Location sold on June 20, 2018
3291	Place Vertu	3075 Thimens Blvd Saint-Laurent	Place Vertu Holdings Inc.	Ceased operations end of January 2018. Location sold on July 11, 2018
3294	Oakville Place	240 Leighland Ave, Oakville	Ivanhoe Cambridge II Inc.	Lease Surrender Transaction Approved By The Monitor On October 2, 2017.
3299	Avalon Mall	48 Kenmount Road, St. John's	Crombie Developments Limited	Lease Surrender Transaction Entered Into On September 21, 2017. Approved By The Monitor On October 2, 2017.

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PROCEEDING COMMENCED AT TORONTO

ORDER

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