

COURT FILE NUMBER	2501 – 06120
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
MATTER	IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i> , RSC 1985, c C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SUNTERRA FOOD CORPORATION, TROCHU MEAT PROCESSORS LTD., SUNTERRA QUALITY FOOD MARKETS INC., SUNTERRA FARMS LTD., SUNWOLD FARMS LIMITED, SUNTERRA BEEF LTD., LARIAGRA FARMS LTD., SUNTERRA FARM ENTERPRISES LTD., SUNTERRA ENTERPRISES INC.
DOCUMENT	BRIEF OF LAW OF CERTUS DEVELOPMENTS INC.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McLENNAN ROSS LLP #1900 Eau Claire Tower 600 – 3 rd Avenue SW Calgary, AB T2P 0G5 Lawyer: James P. Flanagan T: (403) 303-9102 F: (403) 303-1659 E: jamie.flanagan@mross.com File No.: 20264945

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PART 1 INTRODUCTION

1. This Brief is submitted on behalf of Certus Developments Inc. ("**Certus**"), an interested party in these proceedings (the "**CCAA Proceedings**") concerning Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc. ("**SQFMI**"), Sunterra Farms Ltd., Sunwold Farms Limited, Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm Enterprises Ltd., and Sunterra Enterprises Inc. (collectively, the "**CCAA Applicants**") pursuant to the *Companies' Creditors Arrangement Act*¹ (the "**CCAA**").
2. On October 30, 2026, Certus will close a transaction for its acquisition of certain real property civically described as 803 – 49th Avenue SW, Calgary, Alberta (the "**Leased Premises**") pursuant to an agreement between Certus and the Leased Premises' current owner, Store Properties Limited ("**SPL**"). The Leased Premises is a retail location currently occupied by SQFMI pursuant to the terms of a written Lease, dated January 15, 1996, (the "**Lease**"), as modified by a Lease Revival and Amending Agreement, dated July 1, 2026 (the "**Revival Agreement**"), made between SPL and SQFMI.
3. The Revival Agreement expressly provides that the term of the Lease will expire on October 31, 2026. On or about September 15, 2026, SPL delivered a Notice of Expiration of Lease to SQFMI informing it that the Lease would terminate on October 31, 2026, and that it would be required to vacate the Leased Premises by that date. On multiple occasions, Certus advised SQFMI, both verbally and in writing, that SQFMI must vacate the Leased Premises upon the expiry of the Lease's term.
4. On Tuesday, October 20, 2026, the CCAA Applicants served an Application, returnable Thursday, October 29, 2026, seeking the further extension of these CCAA Proceedings. Upon Certus' review of that Application, Certus discovered that SQFMI intended to unlawfully occupy the Leased Premises following the expiry of the Lease's term on October 31, 2026.

¹ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, [**CCAA**].

5. Certus will not, and cannot, authorize SQFMI to overhold or otherwise continue to occupy the Leased Premises beyond the expiry of the Lease. Certus has agreed to lease the Leased Premises to a third-party tenant (the “**New Tenant**”) under an arrangement requiring Certus to attend to demolition and construction works to commence immediately following the expiry of the Lease’s term. SQFMI’s unlawful occupation of the Leased Premises will expose Certus to significant risk of defaulting on its obligations to prepare the Leased Premises for the New Tenant’s occupancy.
6. Certus files this Brief in support of its opposition to the extension of the stay of proceedings in so far as the Leased Premises are concerned and/or its own application seeking an Order partially lifting the stay of proceedings granted in favour of SQFMI for the narrow purpose of enabling Certus to enforce its rights of occupancy under the Lease.

PART 2 FACTS

7. These CCAA Proceedings commenced in 2025. On April 28, 2026, this Honourable Court re-extended these CCAA Proceedings by granting a Second Amended and Restated Initial Order (the “**SARIO**”). Paragraphs 13 through 16 of the SARIO impose a comprehensive stay of proceedings of all enforcement actions that may be taken against the CCAA Applicants (the “**Stay**”). The Stay Period (as defined in the SARIO) is set to expire on October 30, 2026. The business of the CCAA Applicants includes the operation of several retail grocery stores. SQFMI operates one such retail location situated at the Leased Premises.
8. SQFMI occupies the Leased Premises pursuant to the Lease, dated January 15, 1996.² On July 1, 2026, SPL and SQFMI entered into the Revival Agreement.³ The Revival Agreement expressly provides that the Lease’s term will expire on October 31, 2026. The unambiguous text of the Revival Agreement reads as follows:

The term of the revived lease (the “**Revived Term**”) shall commence on July 1, 2026, and shall expire on October 31, 2026, unless sooner terminated with the terms and conditions of the Lease.⁴

² Affidavit of James Jenkins, sworn October 26, 2026, at para 5 and Exhibit “A”, [**Jenkins Affidavit**].

³ Jenkins Affidavit, at para 12.

⁴ Jenkins Affidavit, at Exhibit “A”.

9. On June 30, 2026, Certus and SPL entered into an agreement contemplating a transaction (the **"SPL-Certus Transaction"**) for SPL's sale of the title to the Leased Premises to Certus.⁵ The SPL-Certus Transaction is set to close on October 30, 2026.
10. On July 30, 2026, SPL sent a letter to SQFMI informing SQFMI of the of the SPL-Certus Transaction and its closing on October 30, 2026.⁶ On August 4, 2026, a representative of Certus sent an email to representatives of SQFMI notifying them that Certus expected SQFMI to provide Certus with vacant possession of the Leased Premises on October 31, 2026.⁷ On August 27 and September 9, 2026, a representative of Certus met with a representative of SQFMI in person. During those meetings, Certus' representative reiterated that Certus required vacant possession of the Leased Premises on October 31, 2026.⁸
11. On or about September 15, 2026, Store Properties delivered a Notice of Expiration of Lease (the **"Notice of Expiration"**) to SQFMI.⁹ The said Notice included the following text:
 4. The Landlord hereby notifies the Tenant that the Holdover Term will expire on October 31, 2026 (the **"Expiry Date"**) and that the Tenant shall deliver vacant possession of the Premises to the Landlord on the Expiry Date.
 5. If the Tenant does not deliver vacant possession of the Premises to the Landlord on the Expiry Date, the Landlord reserves the right to take action for recovery of possession of the Premises, in accordance with Section 17.10 of the Lease.
12. SPL has not entered into any further agreement with SQFMI contemplating the extension of the Lease's term, nor has it represented to SQFMI that SQFMI may continue to occupy the Leased Premises following the expiry of the Lease's term on October 31, 2026.¹⁰ Certus has also not made any agreement with SQFMI that it can occupy the Leased Premises after October 31, 2026.

⁵ Affidavit of Ron Ghitter, sworn October 26, 2026, at para 2, [**Ghitter Affidavit**].

⁶ Ghitter Affidavit, at para 5 and Exhibit "C".

⁷ Ghitter Affidavit, at para 6 and Exhibit "D".

⁸ Ghitter Affidavit, at para 7.

⁹ Ghitter Affidavit, at para 9 and Exhibit "E".

¹⁰ Jenkins Affidavit, at para 21.

13. Certus has entered into written lease agreement (the “**New Lease**”) with the New Tenant.¹¹ The terms of the New Lease require Certus to attend to significant works to prepare the Leased Premises for the New Tenant’s occupancy on March 1, 2027.¹² Such works are scheduled to commence on November 1, 2026, and Certus anticipates that it will require the full four-month period between November 2026 and February 2027 to attend to the said works.¹³

PART 3 ISSUES

14. Certus submits that there are three issues as between Certus and SQFMI for this Honourable Court’s determination:
- (a) Will SQFMI have any lawful right to continue to occupy the Leased Premises following the expiry of the Lease on October 31, 2026?
 - (b) Should this Honourable Court grant an Order partially lifting the Stay, so as to allow Certus to exercise its right to take possession of the Leased Premises following October 31, 2026?
 - (c) Is SQFMI entitled to an Order extending the Stay, insofar as it pertains to Certus’ rights to take possession of the Leased Premises?

PART 4 ARGUMENT

15. Certus’ argument below proceeds in three parts. First, Certus argues that SQFMI will have no lawful right to continue to occupy the Leased Premises following October 31, 2026. Second, Certus argues that this Honourable Court should grant an Order partially lifting the Stay for the purpose of allowing Certus to take possession of the Leased Premises after October 31, 2026. Third, Certus argues in the alternative that this Honourable Court should not extend the Stay, insofar as it pertains to Certus’ possessory rights to the Leased Premises.

¹¹ Ghitter Affidavit, at para 11.

¹² Ghitter Affidavit, at paras 12 – 14.

¹³ Ghitter Affidavit, at paras 15 – 16.

A. SQFMI maintains no right to occupy the Leased Premises following October 31, 2026

16. The leasing arrangement between SQFMI and Store Properties is governed by the written terms of the Lease and the Revival Agreement. The Revival Agreement expressly provides that the Term of the Lease will expire on October 31, 2026.¹⁴

17. The Lease, whose terms remain in effect *per* the Revival Agreement, expressly provides that the tenant is required to give up vacant possession of the Leased Premises at the termination of the Lease:

17.5 Vacate Upon Termination, Survival

At the termination of this Lease, whether by passage of time or otherwise, **the Tenant shall vacate and deliver upon possession of the Premises** in the same state and condition as they were in upon delivery of possession to the Tenant...¹⁵

18. Article 17.10 of the Lease provides that, if the tenant remains in occupation of the leased premises following the expiry of the Lease, the tenant will be deemed a tenant at will, but that nothing will prevent the landlord from taking action to recover possession of the Leased Premises in such circumstances:

...provided that if the Tenant continues to occupy the Premises without the written consent of the Landlord at the expiration or other termination of the Term, then the Tenant shall be a tenant at will and shall pay to the Landlord, as liquidated damages and not as rent, an amount equal to the aggregate set forth above during the period of such occupancy, accruing from day to day and adjusted pro rata accordingly and subject always to all of the other provisions of this Lease insofar as they are applicable to a tenancy at sufferance **and a tenancy from month to month or from year to year shall not be created by implication of law; provided that nothing herein contained shall preclude the Landlord from taking action for recovery of possession of the Premises.**¹⁶

¹⁴ Jenkins Affidavit, at Exhibit "C".

¹⁵ Jenkins Affidavit, at Exhibit "A", emphasis added.

¹⁶ Jenkins Affidavit, at Exhibit "A", emphasis added.

19. The Ontario Court of Appeal's (the "**ONCA**") 2012 decision in *AIM Health Group Inc. v 40 Finchgate Limited Partnership*¹⁷ describes the four consequences that may possibly arise at law as a result of a tenant's failure to vacate a leased premises upon the expiry of a lease's term. The majority stated as follows in *AIM Health*:

[92] At common law, if a tenant remains in possession following the expiry of the term of the lease, there are four possible legal relationships that can then be created between the tenant and the landlord: (1) a tenancy at sufferance; **(2) a tenancy at will**; (3) a deemed new periodic tenancy, referred to as a holdover tenancy; and **(4) a trespass**.¹⁸

20. *Per* the majority in *AIM Health*, a tenancy at sufferance, tenancy at will, or holdover tenancy cannot come into being, or remain in effect, without the consent of the landlord or in the face of a landlord's demand for possession of the leased premises.¹⁹ In *Aim Health*, the majority stated that, following the expiry of a lease's term, "[o]nce the former landlord demands possession, the former tenant is no longer there at sufferance and becomes a trespasser."²⁰ The majority's reasons in *Aim Health* also confirm that the provision in article 17.10 of the Lease deeming SQFMI's overholding a tenancy at will is of no assistance to SQFMI, as a tenancy at will is "determinable by either party indicating that it wishes the tenancy at will to end."²¹
21. By operation of the Lease, both SQFMI's tenancy and its proprietary interest in the Leased Premises will terminate and expire on October 31, 2026. Store Properties clearly notified SQFMI that the Lease would expire on October 31, 2026, by way of its delivery of the Notice of Expiration to SQFMI. Certus, who will be the landlord of the Leased Premises on October 31, 2026, has made it clear to SQFMI that it does not intend to extend the term of the Lease and that it will not and cannot countenance SQFMI's overholding or continued occupation of the Leased Premises.

¹⁷ *AIM Health Group Inc. v 40 Finchgate Limited Partnership*, 2012 ONCA 795, [*Aim Health*] [TAB 1].

¹⁸ *Ibid*, at para 92, emphasis added.

¹⁹ *Ibid*, at paras 93 – 97 and 109.

²⁰ *Ibid*, at para 93.

²¹ *Ibid*, at para 94.

22. This Honourable Court cannot find that there exists any enforceable agreement that would enable SQFMI to continue to occupy the Leased Premises beyond October 31, 2026. The Chief Restructuring Advisor to the CCAA Applicants appears to depose that SQFMI has advised him that SPL has agreed to permit SQFMI to continue to occupy the Leased Premises on a month-to-month basis.²² However, this evidence is directly rebutted by the evidence of SPL's President, who deposes that SPL has never made such an agreement with SQFMI.²³
23. Nothing in the CCAA or this Honourable Court's SARIO provides SQFMI with the right to continue to occupy the Leased Premises following October 31, 2026. This is because the CCAA does not serve to rewrite the contractual arrangement giving rise to SQFMI's leasehold interest in the Leased Premises. For the avoidance of doubt, the protective provisions of CCAA section 34(2) that restrict a landlord's right to terminate a lease are of no assistance to SQFMI. Those provisions simply serve to prohibit a landlord from terminating a lease "by reason only that proceedings commenced under this Act, that the company is insolvent or that the company has not paid rent in respect of any period before the commencement of those proceedings."²⁴ CCAA section 34(2) does not prevent the termination of a lease upon the expiry of the lease's term.
24. In his text *Canadian Bankruptcy and Insolvency Law for Commercial Tenancies*, author David Bish provides the following commentary confirming that a commercial tenant in CCAA proceedings maintains no entitlement to overhold or extend a lease following the expiry of the lease's term:

A tenant's continued occupancy should always be founded on a legal basis to occupy, grounded in its rights under the lease with consideration of any express statutory rights of occupation (of which there are none in the CCAA). A tenant's right of occupation is restricted by the term of the lease, and **the granting of a right of occupation and sweeping prohibitions against interference with the debtor do not permit a tenant to remain in occupation beyond the expiration of the lease.** Where an insolvent tenant has rights of renewal under a lease, **there is no basis at law for suspending or extending by court order the time in which the tenant may exercise such rights of renewal.** Some CCAA orders contain broad provisions tolling or extending time periods and limitations periods, but **such provisions ought**

²² Affidavit of Neil Narfason, sworn October 20, 2026, at para 22 [**Narfason Affidavit**].

²³ Jenkins Affidavit, at para 21.

²⁴ CCAA, *supra*, at s 34(2).

not to be interpreted as granting a right of occupation beyond the term of the lease or to create, suspend or extend the exercise of renewal rights under leases.

Paragraph 16 of the Ontario Model CCAA Order provides that no person shall discontinue, fail to honour, alter, interfere with, repudiate terminate or cease to perform any renewal right. **This language does not confer on an insolvent tenant a right to renew a lease where such renewal right has not been granted contractually by the landlord.** There is no legal basis for compelling by court order an extension or renewal of a lease in the absence of a contractual entitlement to the same. A leasehold interest is more than a matter of contractual rights or entitlements; it is a tenure, an interest in land, and **the court cannot order a new lease or an extension of an existing lease bestowed on a debtor simply because the debtor wishes it. Doing so would be to order the owner of land to part involuntarily with an interest in its property.** Where a lease expires in accordance with its terms during CCAA proceedings, the landlord will be entitled to possession of the premises and the debtor will have no right to continue in occupation or use of the premises absent a consensual agreement with its landlord.²⁵

25. To interpret the CCAA or the SARIO as bestowing an extended right to occupy the Leased Premises on SQFMI would have the effect of depriving Certus of exclusive rights it will imminently acquire to use and enjoy the Leased Premises upon the closing of the SPL-Certus Transaction. SQFMI maintains no contractual right to overhold or otherwise continue to occupy the Leased Premises following October 31, 2026.
26. Certus thus submits that this Honourable Court must conclude that SQFMI maintains no right to extend the Lease, overhold, or otherwise continue to occupy the Leased Premises following October 31, 2026. Any tenancy at will arising by operation of the Lease will be immediately determinable at the election of Certus. Consequently, Certus submits that SQFMI will be a trespasser following October 31, 2026, should it fail to provide Certus with vacant possession of the Leased Premises at that time.

B. This Court should grant an Order partially lifting the Stay

²⁵ David Bish, *Canadian Bankruptcy and Insolvency Law for Commercial Tenancies* (Toronto: LexisNexis, 2016), at page 140, emphasis added [***Insolvency Law for Commercial Tenancies***] [TAB 2].

27. Pursuant to paragraphs 13 and 14 of the SARIO, all parties are prohibited from taking any steps to enforce any rights as against the CCAA Applicants during the pendency of the Stay Period (as defined in the SARIO). The SARIO is set to expire on October 30, 2026, but the CCAA Applicants seek to extend the Stay Period through to January 29, 2027.
28. Should this Honourable Court grant the Extension Order sought by the CCAA Applicants, Certus seeks an Order lifting the stay imposed by the SARIO for the limited purpose of authorizing Certus to enforce any and all of its rights to take possession of the Leased Premises following the expiry of the term of the Lease on October 31, 2026. For the avoidance of doubt, Certus is not seeking to lift the stay to enforce monetary claims against the CCAA Applicants or to bypass any interest that any secured creditor of the CCAA Applicants may maintain against the personal property of the CCAA Applicants.
29. In *Insolvency Law for Commercial Tenancies*, David Bish notes that the general stay of proceedings imposed by a CCAA initial order may prohibit a landlord from taking steps to regain possession of a leased premises following the expiry of a lease, such that it may be necessary for a landlord to obtain an order lifting the stay:

...it may be prudent to seek to lift the stay to permit such actions to be taken to avoid an allegation of being in breach of the Initial CCAA Order. In such circumstances, **there is no basis for the courts to continue to restrain a landlord from recovering possession of the premises and ousting an overholding tenant whose interest in the leased premises has expired.**²⁶

30. The Ontario Superior Court of Justice's (the "**ONSC**") decision in *Canwest Global Communications Corp., Re*²⁷ sets out a list of situations in which CCAA courts have previously determined it is appropriate to lift a stay of proceedings including, without limitation, the following:

- b) the applicant shows hardship (the hardship must be caused by the stay itself and be independent of any pre-existing condition of the applicant creditor);

...

²⁶ *Canadian Bankruptcy and Insolvency Law for Commercial Tenancies*, *supra*, at page 141.

²⁷ *Canwest Global Communications Corp.*, 2011 ONSC 2215, [**Canwest**] [**TAB 3**].

- d) the applicant would be significantly prejudiced by refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors;

...

- i) it is in the interests of justice to do so.²⁸

31. This Honourable Court recently considered an application to lift a stay in CCAA proceedings in its 2025 decision in *Wallace & Carey Inc. (Re)*.²⁹ There, Justice Marion identified the following non-exhaustive factors that CCAA courts may consider in assessing a stakeholder's application to lift the stay:

(a) whether the applicant has "serious grounds" or "sound reasons" or [*sic*] lifting the stay. Non-exhaustive examples include when a CCAA plan is likely to fail or has not been put forward in a timely way, hardship or prejudice to the applicant caused by the stay, a necessity for payment, loss of security, the protection of a pre-stay right or a right which could be lost due to the passage of time (for example, limitations);

(b) the merits of the proposed action or step, where relevant;

(c) whether the prejudice caused by the stay is material and unique to the applicant;

(d) the relative prejudice of affected parties;

(e) the balance of convenience;

(f) the status of the CCAA proceedings and the impact lifting the stay will have on them;

(g) whether the debtor company, the applicant seeking the stay, and any other relevant stakeholders have acted in good faith and with diligence: ...;

(h) whether lifting the stay is consistent with the remedial objectives of the CCAA. Like any discretionary decision under the CCAA, the court's discretion to lift a CCAA stay must be exercised in furtherance of the CCAA's remedial purpose:...and

(i) whether it is in the interests of justice, or would be equitable, to lift the stay.³⁰

²⁸ *Ibid*, at para 26.

²⁹ *Wallace & Carey Inc. (Re)*, 2025 ABKB 750, [*Wallace & Carey*] [TAB 4].

³⁰ *Ibid*, at para 56, citations omitted.

32. The facts of the instant case fall squarely within the ambit of the above-described circumstances identified by the ONSC in *Canwest Global* in which CCAA courts have determined that it is appropriate to lift the stay of proceedings. Likewise, the factors articulated by Justice Marion in *Wallace & Carey* overwhelmingly support lifting the stay. Certus' argues as follows with respect to these points:
- a. Certus will suffer prejudice and serious hardship by virtue of the stay itself – with the stay remaining in effect with respect to the Leased Premises, Certus will not be able to access its property and will face exposure to losses that may arise from its inability to take steps required to prepare the Leased Premises for the New Tenant's occupancy;
 - b. The prejudice to Certus resulting from the stay is unique and material to Certus. Certus is not a creditor of the CCAA Applicants waiting to receive its distribution of liquidation proceeds in ranking order. Rather, it shortly will be a landowner deprived by the deliberate inactions of SQFMI of the ability to use and enjoy its property without any lawful justification. There is also prejudice to Store Properties, as outlined in the Affidavit of J. Jenkins. There is a holdback of the purchase price, being held back by Certus on the sale of the property to Certus, and the payment of the holdback is dependent on Certus obtaining a new tenant for the Leased Premises. Any delay to Certus will result in a delay of the payment of the holdback. Therefore, Certus and the other stakeholders of the CCAA Applicants are not on the same footing;
 - c. Lifting the stay will not cause any actual prejudice to SQFMI or its secured creditors, as SQFMI has no right in contract or arising by virtue of any of the provisions of the CCAA or the SARIO to remain in possession of the Leased Premises after October 31, 2026. Regarding the impact of an Order lifting the stay with respect to SQFMI's secured creditors, it bears reiterating that Certus does not seek to lift the stay for the purpose of facilitating its seizure and sale of the personal property of SQFMI or to enable Certus to pursue monetary claims against SQFMI. Rather, Certus seeks to lift the stay so that it make take possession of the real property it will shortly acquire;

- d. Insofar as the Stay impairs Certus' ability to take possession of the Leased Premises, the Stay does not serve to maintain the status quo as between SQFMI and its landlord. Rather, the Stay would effectively grant to SQFMI the substantive right to occupy, use, and enjoy lands in which it no longer maintains any proprietary interest, contrary to the terms of the Lease and the Revival Agreement;
- e. Certus' proposed enforcement steps – i.e., enforcing its rights to take possession of the Leased Premises following the expiry of the Lease – are unquestionably merited. Upon the expiry of the Lease, SQFMI will have no continuing right to occupy the Leased Premises and Certus will have the right to recover possession of the Leased Premises;
- f. Lifting the stay will have no impact on the CCAA Applicants' restructuring plan in these CCAA Proceedings. The CCAA Applicants' core objective in these CCAA Proceedings is to liquidate their business assets.³¹ Following the expiry of the Lease, the Leased Premises and SQFMI's business operated thereat will cease to be business assets of SQFMI. As such, SQFMI maintains no rights or interest in the Leased Premises to liquidate in its ongoing sales process. Similarly, as SQFMI maintains no right to occupy the Leased Premises, a Stay constraining Certus from taking possession of the Leased Premises cannot possibly further SQFMI's objectives in attempting to negotiate a plan of compromise or arrangement with its stakeholders;
- g. Given that SQFMI maintains no right to occupy the Leased Premises or to include the business operated at the Leased Premises in its pending liquidation, maintaining the Stay with respect to Certus' right to take possession of the Leased Premises cannot serve to further the underlying remedial purpose of the CCAA identified by the Supreme Court of Canada in *Century Services Inc. v Canada (Attorney General)* – i.e., avoiding the social and economic effects of bankruptcy while a debtor seeks to reorganize its financial affairs³²;

³¹ Narfason Affidavit, at para 8.

³² *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60, at para 50, [TAB 5].

- h. The CCAA Applicants have failed to exercise due diligence with respect to the Lease and SQFMI's failure to take necessary steps to wind down its operations at the Leased Premises. SQFMI expressly agreed that the Lease would expire on October 31, 2026. SQFMI was advised of the SPL-Certus Transaction. SQFMI was informed on multiple occasions by both SPL and Certus that it would be required to give up possession of the Leased Premises upon the expiry of the Lease's term; and
 - i. Given that SQFMI has long known of its obligation to vacate the Leased Premises, any possible inconvenience that may befall SQFMI by virtue of its obligation to now take immediate steps to vacate the Leased Premises is a problem of entirely of SQFMI's own making.
33. In summary, Certus submits that there are exceptionally clear and sound grounds for this Honourable Court to grant an Order lifting the stay so that Certus may take possession of the Leased Premises.

C. Alternatively, this Honourable Court should not extend the Stay insofar as it pertains to Certus' rights to take possession of the Leased Premises

34. Should this Honourable Court determine that it is not appropriate to grant an Order lifting the Stay, Certus argues in the alternative that the Court should not extend the Stay with respect to the Leased Premises and Certus' rights to take possession of the same.
35. CCAA section 11.02(2) empowers CCAA courts to grant orders extending the initial stay imposed at the outset of CCAA proceedings.³³ *Per* CCAA section 11.02(3), the CCAA Applicants' entitlement to an Order extending the Stay is conditional upon this Honourable Court determining that: (a) there are appropriate circumstances to extend the Stay; and (b), that the CCAA Applicants have acted, and are acting, both in good faith and with due diligence.³⁴

³³ CCAA, *supra*, at s 11.02(3).

³⁴ CCAA, *supra*, at s 11.02(3).

36. This Honourable Court should not find that SQFMI has acted with appropriate due diligence with respect to its obligations to vacate the Leased Premises. In the Revival Agreement dated, July 1, 2026, SQFMI expressly agreed that the Lease's term would end on or before October 31, 2026. Additionally, SQFMI received abundant and unambiguous notice that it would be required to vacate the Leased Premises by October 31, 2026, including, without limitation, the September 15, 2026, Expiration Notice. Despite having agreed to depart from the Leased Premises and having received advance notice confirming that it would be required to depart from the Leased Premises, SQFMI has evidently made no plans whatsoever to wind down its operations at the Leased Premises.
37. SQFMI furnishes no evidence explaining how or why it could have possibly expected that it could have been permitted to continue to occupy the Leased Premises beyond October 31, 2026. Additionally, the CCAA Applicants' Consolidated Cash Flow Statements project that the CCAA Applicants would maintain cash resources of approximately \$9.5 million for the week ending October 30, 2026.³⁵ This is to say, despite their insolvency, the CCAA Applicants do not appear to lack the financial resources to incur whatever operational expenses may be necessary for SQFMI to remove its inventory and other personal property from the Leased Premises.
38. In light of the above, Certus respectfully submits that this Honourable Court cannot find that SQFMI has acted, or is acting, with appropriate due diligence with respect to the Leased Premises and its obligation to vacate the same. For this reason, should this Honourable Court decline to lift the Stay in the manner sought by Certus, it should nevertheless decline to extend the Stay, insofar as the Stay pertains to the Leased Premises and Certus' right to recover possession of the same following October 31, 2026.

PART 5 CONCLUSION AND RELIEF SOUGHT

39. For all of the reasons articulated above, Certus respectfully submits that this Honourable Court should grant an Order partially lifting the Stay, so as to give effect to Certus' lawful right to take possession of the Leased Premises following the expiry of the Lease's term.

³⁵ Eighth Report of the Monitor, dated October 20, 2026, at Appendix "A".

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Calgary, in the Province of Alberta, this 26th day of October, 2026.

McLENNAN ROSS LLP

Per: 

James P. Flangan
Solicitors for Certus Developments Inc.

TABLE OF AUTHORITIES

1. *AIM Health Group Inc. v 40 Finchgate Limited Partnership*, 2012 ONCA 795.
2. David Bish, *Canadian Bankruptcy and Insolvency Law for Commercial Tenancies* (Toronto: LexisNexis, 2016).
3. *Canwest Global Communications Corp.*, 2011 ONSC 2215.
4. *Wallace & Carey Inc. (Re)*, 2025 ABKB 750.
5. *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60.