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## HUDSON'S BAY – that's a wrap

On March 7, 2025, Hudson's Bay Company ("**HBC**"), Canada's oldest corporation and storied department store, commenced creditor protection proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). As part of the CCAA process, HBC sought to monetize its leasehold interests in about 100 retail locations across the country.

HBC's retail leases held considerable value. They generally locked-in rent for years at low per square foot rates, often with capped or fixed additional rents. Many of the leases also granted HBC renewal options that could extend the term for decades (in some cases, as long as a century). Furthermore, the leases tended to afford HBC considerable control over the shopping centres of which they formed a part. Restrictive covenants, no-builds, consent rights over redevelopment or changes in the merchandising mix, etc., imposed significant constraints on landlords that sought to manage and develop their centres. These controls carried commercial value for HBC in its dealings with landlords.

While the rights under a lease may provide a tenant with value, in order to maintain those rights, a tenant must satisfy its ongoing lease obligations. For HBC, that meant maintaining and repairing its relatively large premises, paying the rent, and in some cases, operating a department store (or refraining from using the premises for a purpose other than the operation of a department store).

The burden of meeting these lease obligations kept many potential tenants from bidding on the HBC leases. Of the roughly 100 leases available to potential purchasers (i.e., new tenant assignees), only 39 leases

received bids, from a total of 12 parties. The other 60 or so retail leases were disclaimed (i.e., cancelled and the premises returned to their landlords, with no payment to or from the tenant).

Of the 39 leases that received bids, five were assigned to YM Inc. (owner of the retail brand "Bluenotes") and one lease was bought back by its landlord, Ivanhoe Cambridge.

Proclaimed billionaire businesswoman, Ruby Liu, sought to take an assignment of 28 of HBC's leases, including several of the most prominent retail locations. Of these 28, the assignment of three leases in British Columbia was uncontested. This was not surprising, as Ruby Liu holds a controlling interest in the landlords that owned those three shopping centres. The assignment of the other 25 retail leases was vigorously opposed by the landlords. HBC brought a motion asking the Court to force the landlords to accept the assignment of the 25 contested leases. The landlords, including Cadillac Fairview, Morguard, Oxford, KingSett, QuadReal, and Ivanhoe Cambridge, opposed the motion.

On October 24, 2025, Justice Osborne released his decision, where he canvassed section 11.3 of the CCAA to assess whether it would be proper to force the landlords into a lease relationship with Ruby Liu.

The CCAA gives the Court considerable discretion to decide the matter. Among the factors to be considered are: (1) whether the Monitor (i.e., the "eyes and ears of the court" during the CCAA process) approves of the assignment; (2) whether the proposed assignee would be able to perform all the obligations of the tenant under the leases; and (3) whether the Court considers the assignment to be appropriate.

Remarkably, the Monitor did not support the assignment of leases.

This was a significant factor for the Court.

The Court also found that HBC and Ruby Liu failed to demonstrate that the new proposed tenant would be able to meet the ongoing obligations under the leases. It was not sufficient to demonstrate that adequate financial resources were available (though, even that fact was not entirely accepted by the Court). The Court concluded that the evidence fell “well short” of demonstrating that the proposed assignee could satisfy the operational requirements of running a department store.

The Court held that it would be inappropriate to force a group of landlords into a long-term relationship with a tenant that they did not accept simply to generate sale proceeds from the lease assignment that would be used to pay one of HBC’s secured creditors. In the Court’s view, there was no compelling reason that the interests of a secured creditor ought to be prioritized over the interests of the landlords. The Court noted that HBC was using the CCAA for liquidation purposes. It is not clear whether the Court would have come to same conclusion had the CCAA proceedings been used for restructuring, with the ultimate goal of having the tenant emerge as a viable going concern.

If this were a restructuring CCAA, the landlords’ interests would not be pitted solely against those of a secured creditor (as was the case here), but rather against

all parties that stood to gain from a resuscitated version of the tenant’s business, which may include employees, suppliers, secured parties and others. Following the Court’s refusal to force the assignment, all 25 leases were disclaimed, effective November 27, 2025.

Some have said that for the past several years, HBC was more of a real estate company than a department store. Its vast real estate holdings, including in some of Canada’s most prominent retail nodes, gave HBC considerable real estate value. However, when one’s real estate empire is leasehold, maintaining the value requires the ongoing satisfaction of obligations under the leases. As the department store holding up the real estate empire was failing, stores turned dilapidated, staff levels dwindled, and rent was late. Eventually, HBC could no longer sustain its lease obligations and the real estate empire collapsed.

In 1668, HBC opened its first trading post on the shores of James Bay. The company managed to keep the lights on by adapting to changing times for over 357 years. That era has come to an end. The distinctive trademarked HBC stripes were purchased by Canadian Tire. The royal charter is slated to be purchased through a joint bid by the Weston and Thompson families, and donated to a group of four Canadian museums.

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