

COURT FILE NUMBER 25-2642858
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE NOTICE OF INTENTION TO
FILE A PROPOSAL OF OLYMPUS FOOD (CANADA) INC.

APPLICANT **LE CARREFOUR LAVAL (2013) INC.**

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Gowling WLG (Canada) LLP**
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File No.: L48240263

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must attend Court by videoconference or phone when the application is heard as shown below:

Date: ~~August 26, 2020~~ October 14, 2020
Time: ~~11:00am~~ 2:00 pm
Where: Calgary Courts Centre – via Webex (details to be provided)
Before: The Honourable Justice B.E. Romaine

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant Le Carrefour Laval (2013) Inc. (“**Cadillac Fairview**”) seeks an order pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, (the “**BIA**”):
 - (a) Abridging the time for service of this Application to the time actually given, if necessary;

- (b) Deeming service of this Application good and sufficient;
- (c) Declaring that the Leases between Cadillac Fairview and Olympus Food (Canada) Inc. (“**Olympus**”) dated June 11, 2015 and March 3, 2015 (the “**Leases**”) in respect of the premises as described in the Leases (the “**Premises**”) shall not be disclaimed or resiliated pursuant to section 65.2 of the BIA;
- (d) Setting aside the Notice by Debtor Company to Disclaim or Resiliate an Agreement dated July 29, 2020 served by Olympus on Cadillac Fairview on July 30, 2020 (the “**Disclaimer**”);
- (e) Prohibiting and enjoining Olympus and the Proposal Trustee from taking further action to terminate or disclaim the Leases, except upon the consent of the parties or upon Order of this Court; and
- (f) Such further and other relief as counsel requests and this Honourable Court may grant.

Grounds for making this application:

2. Olympus operated various Kentucky Fried Chicken restaurants in Québec.
3. On or about June 11, 2015 and March 3, 2015, Cadillac Fairview and Olympus entered into the Leases, pursuant to which Cadillac Fairview agreed to lease the Premises to Olympus.
4. In or about May 2019, Olympus entered into an agreement with FMI Atlantic Inc. (“**FMI**”) to sell certain of its assets, including its rights and interest in the Leases, to FMI (the “**PSA**”). To the best of the knowledge of Cadillac Fairview, and based upon correspondence from Olympus to Cadillac Fairview, the transaction underlying the PSA was scheduled to close by June 16, 2019 (the “**Transaction**”).
5. To the best of the knowledge of Cadillac Fairview, since July 2019, FMI has occupied the Premises, and has paid the rent and otherwise complied with the terms of the Leases.
6. On July 30, 2020, Olympus served the Disclaimer on Cadillac Fairview pursuant to section 65.2 of the BIA. Pursuant to the Disclaimer, Olympus provided Cadillac Fairview with its intention to disclaim or resiliate the Leases.

7. Having effectively assigned the Leases to FMI, Olympus cannot now disclaim the Leases. In addition, in a sworn declaration dated December 11, 2019, Olympus' representative, Emmanuel Jalandoni, confirmed that Cadillac Fairview, FMI and Olympus had all agreed to the written terms of the assignment of the Leases.
8. If the Leases were not assigned, the Disclaimer of the Leases will affect FMI's tenancy and occupation of the Premises, and in doing so, impose the risk and consequences of Olympus' failure to close the Transaction or otherwise assign the Leases as contemplated by the PSA on Cadillac Fairview to its detriment. Cadillac Fairview reasonably relied on the representations made by Olympus with respect to the PSA and the Transaction, and Olympus should not now be permitted to improperly interrupt FMI's tenancy or Cadillac Fairview's reliance on the represented and effective assignment. In attempting to do so, the actions of Olympus fall short of the requirement under the BIA that it act in good faith and treat its stakeholders in a fair and equitable manner.
9. Such further and other grounds as counsel may advise and this Honourable Court considers to be just and appropriate in the circumstances.

Material or evidence to be relied on:

10. Affidavit of Robert Crépin, to be sworn. [Christian Vézina, sworn August 28, filed.](#)
11. Pleadings and proceedings in the within Action.
12. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

13. *Alberta Rules of Court*, AR 124/2010.

Applicable Acts and regulations:

14. *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended.
15. *Judicature Act*, RSA 2000, c J-2, as amended.
16. *Civil Code of Québec*, CQLR c CCQ-1991.

17. Such further and other acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

18. None.

How this application is proposed to be heard or considered:

19. By Webex.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.