

Ontario Commercial Court Declines the Hudson Bay's Proposed Sale and Forced Assignment of Leases Under Subsection 11.3 of the CCAA: Key Guidance for Landlords

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Overview

As part of the ongoing Hudson's Bay Company ("HBC") insolvency proceedings under the Companies' Creditors Arrangement Act ("CCAA"), Blaney McMurtry LLP lawyers, [John Wolf](#) and [Brendan Jones](#), represented two of the eight landlords that successfully opposed HBC's unprecedented motion to force the sale and assignment of 25 former Hudson's Bay department store leases under subsection 11.3 of the CCAA.

In the CCAA proceeding, Blaney McMurtry LLP acts for three landlords accounting for 19 of HBC's 96 leased stores plus one logistics center. Of these 20 leases, six were subject to the forced assignment motion and the remaining 14 were disclaimed.

As a condition of the sale of the 25 leases to Ruby Liu Commercial Investment Corp. ("RLCIC"), HBC had to either obtain the relevant landlord's consent or seek a Court order forcing the assignment of the leases to RLCIC. Landlords representing 24 of the 25 locations opposed the proposed assignment, leading to a two-day contested hearing in August 2025.

The Commercial Court sided with the landlords and dismissed HBC's lease assignment motion in a decision released on October 24th, 2025. The successful outcome for landlords is notable because the proposed \$69 million transaction with RLCIC arose from a Court-approved lease monetization process that would have led to significant recovery for secured creditors.

The decision provides meaningful guidance to landlords (and tenants) on the risks and benefits of the Court's exercise of its "extraordinary" power to compel the assignment of commercial leases under subsection 11.3 of the CCAA.

Principles Guiding the CCAA Forced Assignment Test

Subsection 11.3 of the CCAA gives the Court the power to force the assignment of a lease to a tenant with whom the landlord never agreed to contract. The key statutory considerations set out in paragraph 11.3(3) of the CCAA are:

- a. Whether the monitor approved the proposed assignment;
- b. Whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- c. Whether it would be appropriate to assign the rights and obligations to that person.

In general, parties have not frequently resorted to the use of subsection 11.3 of the CCAA in the face of landlord opposition and/or the absence of monitor support of the proposed forced assignment.

The Court reviewed and distilled the principles that emerged from the existing forced assignment case law both before and after the enactment of subsection 11.3 of the CCAA as well as assignments under paragraph 84.1(4) of the *Bankruptcy and Insolvency Act*, which include:

- The burden rests on the party seeking the forced assignment
- The standard to be applied is reasonableness
- The analysis is fact-specific
- There must be an evidentiary basis to conclude that the assignee can perform both monetary and non-monetary lease obligations
- The subsection 11.3(3) factors are neither mandatory nor exhaustive - they inform the analysis and are to be considered together with any other relevant factors
- If the proposed assignment is part of an asset sale (as it usually will be), the factors set out in subsection 36(3) of the CCAA, together with the *Soundair Principles*, must also be considered
- The remaining length of the term is relevant
- Landlord consent or refusal to consent (or whether the refusal to consent was reasonable) is irrelevant to the analysis
- The paragraph 11.3(3)(c) "appropriateness" inquiry is a fairness-based consideration of what is "just and equitable" in the circumstances – it is a balancing exercise that considers all stakeholders and the broader restructuring context, including whether the assignment is part of a going concern transaction or a liquidation

Why the Forced Assignment Motion Failed in this Case

First, after reviewing all the evidence filed on the motion, the Court-appointed monitor gave its position days before the motion that it did not approve the forced assignment. While monitor

approval of a forced lease assignment is not a mandatory requirement, the Court found the lack of monitor approval was significant.

Second, on the assignee's ability to perform lease obligations, the Court expressed substantial concern about RLCIC's business plan to launch and operate 25 new "Ruby Liu" branded department stores in the former HBC locations. Although RLCIC appeared potentially able to meet financial obligations (as long as the owner provided capital as required), the Court identified serious risks about its ability to perform non-monetary obligations, including:

- Being a new entrant with no operating history in department-store retail and no assets
- Unrealistic financial projections
- Renovation budgets and timelines that were unsubstantiated and inconsistent with industry benchmarks
- The absence of a credible merchandising strategy or demonstrated ability to secure merchandise for 25 stores
- Concerns about the leadership team's capacity to execute openings across three provinces

Third, the Court concluded the assignments were inappropriate in the circumstances. The scale and complexity of the proposed lease transfers, combined with the material risk of RLCIC's projected inability to perform, and the long-term impact on landlords whose anchor-tenant leases spanned decades or even a century, were weighed against the potential benefit to creditors in a liquidation of HBC's assets. The Court determined that the benefits to secured creditors in this CCAA liquidation did not justify overriding the landlords' rights.

Analysis of Rights Relating to *Ipso Facto* Clauses

An *ipso facto* clause is a contract term that terminates or otherwise changes rights or benefits under a contract automatically because a party becomes insolvent or bankrupt. In Canadian insolvency law, such clauses that remove value from a debtor's estate are generally unenforceable based on the common law "anti-deprivation rule" or section 34 of the CCAA.

Four of the leases at issue in the litigation contained provisions that HBC challenged as being unenforceable *ipso facto* clauses. For context, these clauses were negotiated by HBC in 2023 as part of a broader portfolio-wide transaction with a landlord that owned multiple locations where HBC was a tenant.

Under the agreement, HBC received a substantial immediate payment. In exchange, the parties to the affected leases terminated their original leases (which had valuable renewal rights), and new shorter-term leases were signed for each site. The new leases included a conditional right to reinstate the original leases on November 13th, 2028, but only if HBC was not in default of any lease obligations as of that date. In practical terms, HBC would gain the right to return to the original leases only if the condition precedent was satisfied.

The Court rejected HBC's argument and found that these four leases did not contain *ipso facto* clauses. The anti-deprivation rule and section 34 of the CCAA are triggered when an insolvency takes away existing rights; they do not apply to rights that might be earned in the future but are never acquired because the condition precedent is not met. The Court held that these

provisions conferred only future rights that HBC could acquire if it satisfied the condition precedent that would only be known as of November 13th, 2028. Because no existing rights were taken away, the clauses were not void under the anti-deprivation rule or section 34 of the CCAA.

The Court also noted that HBC had already received the benefit of the broader 2023 transaction that gave rise to these conditional provisions.

Practical Takeaways for Landlords and Stakeholders

The opposing landlords faced a difficult, lengthy and expensive fight and ultimately succeeded in protecting their long-term property rights. That success required extensive knowledge of their rights under their respective leases and the CCAA as well as the existing condition of the HBC stores. This decision is among the few reported cases on forced lease assignments, and we expect that it will shape landlord-tenant dynamics in future insolvency scenarios. Key takeaways include:

- Forced assignment requires a fact-specific analysis that weighs the relative impact on all stakeholders. It is not all about maximizing value for creditors
- The Court will take a holistic approach to evaluating the proposed assignment, including considering complex issues surrounding the proposed assignee's future performance of monetary and non-monetary obligations
- Parties can protect themselves through properly structured lease clauses with rights that are subject to a future condition precedent that will not run afoul of the prohibition on enforcement of *ipso facto* clauses

Blaney McMurtry LLP's commercial tenancy team — combining restructuring and litigation experience with industry knowledge — advises landlords on protecting income streams and asset value through strategic enforcement in complex insolvency contexts. For guidance on potential forced lease assignments or landlords' rights when dealing with insolvent tenants generally, please contact [John Wolf](#) or [Brendan Jones](#).