Endorsement of Mr. Justice Koehnen

August 14, 2020 (via email)

This email constitutes my endorsement arising out of today's hearing and should be placed into the court file.

1. This was a comeback hearing arising out of my order of August 5, 2020. Any party who sought to vary that order was entitled to bring a motion today for such relief. The order also required that any moving party file materials three days before today's hearing. No parties filed materials.

2. A number of landlords appeared on the hearing and asked for a short adjournment, if only for a few days. These landlords included: Oxford Properties Group & Crombie REIT, Morguard Investment Limited, Cushman & Wakefield Asset Services ULC, SmartCentres Real Estate Investment Trust, RioCan Real Estate Investment Trust, Triovest Realty Advisors Inc., Cadillac Fairview Corporation Limited, Brookdale Square Inc., 260-5182 Ontario Inc. and 110 Eglington Avenue East Inc.

3. The landlords ask for an adjournment because they require further information to determine whether they will contest the proposition that the United States is the Centre of Main Interest of Moores. While the landlords concede that the COMI of the entire corporate group is in the United States, they submit that COMI is properly considered on the basis of each individual corporation, not on the basis of the corporate group.

4. The primary piece of information information the landlords require is whether Canadian landlords will receive 30 days notice of any lease termination or disclaimer as is at least customary in CCAA proceedings. The landlords have requested this information from the applicant but have been told that it is not available. They submit that Canadian landlords generally do not contest holdings that the United States is the COMI in cases like this because debtors usually agreed to treat the landlords as they would be treated under Canadian law at least insofar as termination and disclaimer are involved.

5. The applicant, Moores, takes the position that an adjournment is not appropriate because the order Moores seeks does not in any way affect the landlords' leases or rights. As Mr. Vu put it in argument, "the objective is not to prejudice anyone's rights." As a result, Moores asserts that there is nothing to vary.

6. In light of More's position, I have signed the order it seeks but on the condition that is understood that the order does not in any way, directly or indirectly, affect the landlords' rights regarding the process for the termination or disclaimer of leases, liquidation sales or the notice to be provided before such events. The landlords remain free to raise those issues at a later point even though they have not filed an objection in the American proceedings. At the same time, nothing in this endorsement should be interpreted as a determination that either Canadian or American law applies to these issues. All of these issues are simply for another day entirely.