

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

Nº: 500-11-058116-209

SUPERIOR COURT

(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1995, c. 36, as amended)

***IN THE MATTER OF THE COMPROMISE
OR ARRANGEMENT OF:***

SPECTRA PREMIUM INDUSTRIES INC.

-and-

**SPECTRA PREMIUM HOLDINGS (USA)
CORP.**

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

**SPECTRA PREMIUM PROPERTIES (USA)
CORP.**

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

**SPECTRA PREMIUM (SHANGHAI)
AUTOMOTIVE TECHNICAL SERVICES CO.
LTD.**

-and-

**SPECTRA PREMIUM (CHONGQING)
AUTOMOTIVE SERVICES CO. LTD.**

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

**INDIANA BECKNELL INVESTORS 2011
LLC**

Respondents

-and-

**ALLIANCE INTERSTAE PARK INDIANA
BECKNELL INVESTORS LLC**

Impleaded party

MOTION FOR DECLARATORY JUDGMENT AND FOR THE ISSUANCE OF A SAFEGUARD ORDER REGARDING A LEASED PROPERTY

INTRODUCTION

1. The Petitioners (the “**Spectra Group**”) are debtor companies in respect to the Motion for the issuance of an Initial Order filed on March 9, 2020 (the “**Initial Motion**”) pursuant to which a First Day Initial Order under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) was issued in this Court file on March 10, 2020 (the “**First Day Order**”) and an Amended and Restated Initial Order was rendered on March 24, 2020 (the “**A&R Initial Order**”), as appears from the Court record.
2. On March 12, 2020, following the filing by the Monitor, in its capacity as Foreign Representative of (i) a *Verified Petition under Chapter 15 for recognition of the Canadian Proceedings and Request for related relief* and (ii) a *Motion for Provisional Relief pursuant to section 1519 of the Bankruptcy Court*, the US Bankruptcy Court for the District of Delaware issued an *Order granting Provisional Relief pursuant to Bankruptcy Code section 1519* and giving full force and effect on an interim basis to the First Day Order including, without limitation, the stay of proceedings set forth in the Initial Order, until otherwise ordered by the US Bankruptcy Court (the “**US Court Order**”), as appears from the US Court Order communicated as **Exhibit R-1**.
3. As of this day, the US Court Order remains in full force and effect pending a final decision on the *Verified Petition under Chapter 15 for recognition of the Canadian Proceedings and Request for related relief*.
4. Since the issuance of the First Day Order, Spectra Group, with the assistance of the Monitor, has been in contact with its suppliers and several other stakeholders advising them of the *status quo* resulting from the First Day Order and of Spectra Group’s continuous operations in the normal course of business.
5. As detailed hereinafter, the Respondent to this motion, Indiana Becknell Investors 2011 LLC (the “**Landlord**”) and a related entity, the Impleaded Party, Alliance Interstate Park Indiana Becknell Investors LLC (the “**New Landlord**”) and collectively with the Landlord: “**Becknell**”) are landlords of Spectra Premium (USA) Corp. (“**Spectra US**”).
6. As announced at paragraphs 76 and 77 of the Initial Motion, it was anticipated that discussions with the Landlord would take place after the issuance of the First Day Order regarding the occupancy of certain premises located in Greenfield, Indiana (USA) for the period after May 31, 2020.
7. Considering the Landlord’s position in the ongoing discussions, more particularly with respect to the expiration of the Lease (hereafter defined), Spectra Group has no choice but to request the urgent intervention of the Court to confirm by declaratory judgment Spectra Group’s rights and to protect the important value of Spectra Group’s assets for the benefit of all stakeholders in this restructuring.

BACKGROUND

8. Spectra Group leases a 250,000 square feet warehouse located at 3052 North Distribution Way in Greenfield, Indiana (the “**Warehouse**”), in accordance with a Lease

Agreement dated April 15, 2013 (as amended (i) by a Letter of Agreement dated July 24, 2013, (ii) by a Second Amendment to Lease dated July 11, 2018 and (iii) a Third Amendment to Lease dated May 28, 2019 (collectively: the “**Lease**”), as appears from said Lease Agreement, including its Letter of Agreement and Amendments communicated *en l’asse* as **Exhibit R-2**.

9. The value of Spectra Group’s inventory located at the Warehouse varies at any given time between approximately 26 M US\$ and 32 M US\$ and the Warehouse allows said inventory to be distributed by Spectra Group to its US customers.
10. During the year 2018, discussions took place between Becknell and Spectra Group that lead to a lease regarding new premises located in the Alliance Interstate Park in Greenfield, Indiana (the “**New Premises**”), as appears from said lease, as amended on November 27, 2018 (the “**New Lease**”), communicated *en l’asse* as **Exhibit R-3**;
11. In accordance with the New Lease, Becknell proceeded to build a new warehouse of approximately 535,800 square feet for the New Lease to start when the construction work was to be “Substantially Completed” i.e. at the date that “(a) a certificate of occupancy, either temporary or permanent, has been issued for the Building, and (b) Lessor’s architect issues a certificate of substantial completion” as appears for section 3(a) of the New Lease and section 6 of Exhibit B forming part of the New Lease (the “**Commencement Date**”).
12. To allow the transition between the Lease and the New Lease, a Third Amendment to Lease was signed on May 28, 2019 (the “**Third Amendment**”) modifying the Lease, as appears from said amendment communicated as **Exhibit R-4**.
13. The Third Amendment essentially provides that the term of the Lease is extended until the date that is 3 months after the Commencement Date of the New Lease, therefore allowing Spectra a 3 month transition period between the old and the new location.
14. Although a certificate of occupancy was issued for the building for the New Lease as of January 31, 2020, Spectra Group has yet to receive the architect certificate of substantial completion provided for in the New Lease.
15. In fact, the new building at the New Premises was yet to be completed in February 2020.
16. Notwithstanding the above, the discussions regarding the transition between the Lease and the New Lease led the parties to agree that the transition period would extend at least to May 31, 2020.
17. This understanding is reflected in an email dated February 27, 2020 sent by Pete Anderson, Becknell’s representative, to Benoit Lefebvre, Spectra Group’s representative, a copy of which is communicated as **Exhibit R-5**;
18. Although a draft of a Fourth Amendment to Lease was circulated (copy communicated as **Exhibit R-6**), it was not signed by the parties prior to the Initial Order;
19. As announced in the Initial Motion, Spectra Group’s restructuring involves a downsizing of its US operations such that a move into the new and larger building with the involved increased costs can no longer be entertained.

20. On March 31, 2020, Spectra US sent a Disclaimer Notice of the New Lease to Becknell in accordance with section 32 of the CCAA and the A&R Initial Order, copy of said disclaimer notice is communicated as **Exhibit R-7**;

POSITION OF THE PARTIES

21. Discussions have taken place between the Landlord and Spectra Group regarding the conditions pursuant to which Spectra US could continue to occupy the Warehouse beyond the expiration of the Lease.
22. In the course of these discussions, the Landlord has indicated that despite the fact that (i) no architect certificate was ever issued and (ii) the parties agreed by exchange of email that the Lease would continue at least until May 31, 2020, should the parties not come to an agreement on an extension of the Lease, Spectra US would have to vacate the Warehouse no later than April 30, 2020.
23. In the last few days, Spectra Group, through the undersigned attorneys, tried to avoid bringing this issue before the Court and negotiate a global agreement with the Landlord or at least get a confirmation from the Landlord that the Lease was valid at least until May 31, 2020.
24. Becknell would not confirm same and seems to maintain its position.
25. It has become apparent that the Landlord is trying to pressure Spectra Group by alleging the April 30, 2020 deadline.
26. Faced with this uncertainty, Spectra Group has no other choice but to request the intervention of this Court to issue the appropriate Orders and protect the value of the assets located in the Warehouse.

CONCLUSION

27. At this stage, Spectra Group is only looking for an Order confirming the Lease will not expire on April 30, 2020 and is still hoping to settle the remaining issues with the Landlord for an agreement on the conditions pursuant to which Spectra US would remain in the Warehouse beyond the expiration of the Lease.
28. Failing to reach such agreement, Spectra Group will assess its options and, if necessary, will request further orders from this Court to maintained the *status quo* and to protect its rights and the interests of all stakeholders, as the Landlord cannot exercise its alleged rights to unilaterally jeopardize the ongoing restructuring efforts of the Spectra Group, to its sole benefit and to the detriment of all stakeholders involved.
29. Considering the Landlord's position that the Lease expires on April 30, 2020, it is urgent for the Court to render the orders sought herein.
30. Spectra Group requests that the delays provided at paragraphs 54 and following of the A&R Initial Order be abridged so to allow the presentation of this motion as soon as practicable for the Court.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- [1] **GRANT** the present *Motion declaratory judgment and for the issuance of a safeguard order regarding a leased property* (the “**Motion**”);
- [2] **ABRIDGE** the delays of presentation of the Motion;
- [3] **DECLARE** that the term of the Lease between Spectra Premium (USA) Corp. (“**Spectra US**”) and Indiana Becknell Investors 2011 LLC for property located at 3052 North Distribution Way in Greenfield, Indiana (the “**Property**”) shall not expire on April 30, 2020;
- [4] **ORDER** Indiana Becknell Investors 2011 LLC to continue providing to Spectra Group the peaceful enjoyment of the Property until May 31, 2020, subject to further order of the Court;
- [5] **THE WHOLE** without costs, except if contested.

MONTREAL, April 28, 2020



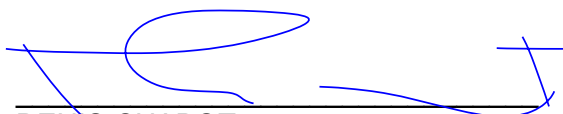
LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

AFFIDAVIT

I, the undersigned, DENIS CHABOT, Vice President and Chief Financial Officer of the Petitioners, having a place of business at 1421 Ampère Street, Boucherville, Québec, J4B 5Z5, solemnly affirm that:

1. I am the authorized representative of the Petitioners and, as such, I have cognizance of all the facts in the present matter;
2. All the facts alleged in the *Motion for declaratory judgment and for the issuance of a safeguard order regarding a leased property* are true.

AND I HAVE SIGNED:


DENIS CHABOT

ASSERMENTÉ, ce 28 avril 2020, devant moi par vidéoconférence Zoom, à Morin-Heights et à St-Hubert m'ayant permis de reconnaître Denis Chabot, de le voir lire l'entièreté de la déclaration sous serment puis signer. Le document transmis par courriel est une *Motion for declaratory judgment and for the issuance of a safeguard order regarding a leased property*.

Commissioner of Oaths for Province of Quebec

NOTICE OF PRESENTATION

TO: THE SERVICE LIST

TAKE NOTICE that the present *Motion declaratory judgment and for the issuance of a safeguard order regarding a leased property* will be presented for before the Honourable Justice Louis Gouin, S.C.J., **on April 30, 2020** at a time in the afternoon and in a forum to be further announced to the Service List. Any party wishing to object to this motion shall file a notice of objection **no later than April 29, 2020 at 5 PM.**

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, April 28 , 2020



LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

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A SAFEGUARD ORDER REGARDING A
LEASED PROPERTY**

O R I G I N A L

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BL 1332

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