

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-053292-179
ESTATE NO.: 41- 2297864
DATE: October 6, 2017

PRESIDING: Louis J. Gouin, J.S.C.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:

175413 CANADA INC.

Debtor/Petitioner

-and-

KPMG INC.

Trustee

CHARGE ORDER

- [1] **ON READING** the *Motion for the Authorization and Approval of Certain Charges, Interim Financing and Other Relief* (the "**Motion**") of 175413 Canada Inc. (the "**Debtor**"), the affidavit and the exhibits in support thereof;
 - [2] **CONSIDERING** the notification/service of the Motion;
 - [3] **CONSIDERING** the submissions of counsel;
 - [4] **CONSIDERING** Sections 50.6 and 64.2 of the *Bankruptcy and Insolvency Act*, Canada (the "**BIA**");
 - [5] **CONSIDERING** that all secured creditors likely to be affected by the charges resulting from the orders herein have been notified of the Motion;
 - [6] **CONSIDERING** that it is appropriate to order charges, ranking senior to and ahead of hypothecs and security interests over any or all of the Debtor's property
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existing in favour of the Debtor's secured creditors namely, The Toronto-Dominion Bank (the "**TD Bank**"), BDC Capital Inc., Business Development Bank of Canada, Investissement Québec, Thinking Capital Financial Corporation, Evolocity Financial Group Inc. and Royal Bank of Canada (to the extent hereafter set forth), in order to:

- (i) secure the obligations of the Debtor owing to Continental Capital Investments Inc. (the "**Interim Lender**") under the credit facility to be provided by the Interim Lender to the Debtor (the "**Interim Financing Facility**") pursuant to the terms and conditions of a commitment letter issued by the Interim Lender on October 2, 2017 (the "**Commitment Letter**"); and
- (ii) secure the fees of the Debtor's legal counsel, the Trustee and the Trustee's legal counsel (to the extent applicable).

THE COURT:

[7] **GRANTS** the Motion.

NOTIFICATION/SERVICE

[8] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further notification/service thereof.

[9] **PERMITS** notification/service of this Order at any time and place and by any means whatsoever.

INTERIM FINANCING FACILITY AND INTERIM FINANCING CHARGE

[10] **ORDERS** that the Debtor be and is hereby authorized to enter into, execute and deliver and ratifies the Debtor's entering into, signing, delivery and execution of the Commitment Letter in or substantially in the form of the Commitment Letter produced as Exhibit P-1 to the Motion (as well as all future amendments thereto and replacements, restatements and renewals thereof) and such agreements, security documents and other definitive documents (collectively, the "**Interim Financing Documents**") as may be required by the Interim Lender in connection with the Interim Financing Facility and the Commitment Letter, and that the Debtor is hereby authorized to perform all of its obligations under the Interim Financing Documents.

[11] **ORDERS** that the Debtor be and is hereby authorized to borrow, repay and reborrow from the Interim Lender such amounts from the Interim Financing Facility from time to time as the Debtor may consider necessary or desirable in order to fund the ongoing expenditures and restructuring costs of the Debtor, and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents.



- [12] **ORDERS** that the Debtor shall pay to the Interim Lender, when due, all amounts owing or to become owing (including principal, interest, fees, closing fees, monitoring fees, prepayment amounts, charges and expenses, all reasonable fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lender) under the Interim Financing Documents or any other document or agreement relating thereto or envisaged thereby (collectively the "**Interim Financing Indebtedness**") and shall perform all of its other obligations to the Interim Lender pursuant to the Interim Financing Documents and this Order.
- [13] **DECLARES** that, subject to paragraph [17] hereof, the Debtor's present and future assets, rights, undertakings and property, movable, personal, corporeal or incorporeal, tangible or intangible and wherever situate, including all proceeds thereof (collectively the "**Property**") are hereby charged by and subject to a security and charge to the extent of the aggregate principal amount of \$2,400,000 plus interest at the rate of 17% *per annum* as well as all of the hypothecs and security interests created or to be created pursuant to the Interim Financing Documents (collectively the "**Interim Financing Charge**") in favour of the Interim Lender, as continuing and collateral security for the Interim Financing Indebtedness and all obligations of the Debtor with respect to all amounts owing and all obligations required to be performed under or in connection with the Interim Financing Documents, which Interim Financing Charge shall have the priority established by paragraph [15] hereof.

ADMINISTRATION CHARGE

- [14] **DECLARES** that, subject to paragraph [17] hereof, the Property is hereby charged by and subject to a security and charge to the extent of the aggregate principal amount of \$100,000 in favour of the Debtor's legal counsel, the Trustee and the Trustee's legal counsel (to the extent applicable), as continuing and collateral security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings under the *BIA* and the sale and solicitation process, in particular, and the Debtor's restructuring, in general, having the priority established by paragraph [15] hereof (the "**Administration Charge**").

PRIORITIES AND GENERAL PROVISIONS RELATING TO THE CHARGES

- [15] **ORDERS** and **DECLARES** that the ranking of the Interim Financing Charge and the Administration Charge (collectively the "**Charges**") shall be as follows:
- (a) first, subject to paragraph [16] hereof, the Interim Financing Charge, senior to and ahead of all hypothecs, mortgages, priorities, prior charges, security interests, statutory deemed trusts (other than those created or recognized under express provisions of the *BIA*), liens, charges and encumbrances and any other rights or security of any nature, source or kind (collectively the



"Encumbrances") without any requirement of publication, registration, recording, filing or perfection in any jurisdiction whatsoever; and

- (b) second, subject to paragraph [16] hereof, the Administration Charge, senior to and ahead of all Encumbrances, other than the Interim Financing Charge, without any requirement of publication, registration, recording, filing or perfection in any jurisdiction whatsoever.

[16] **ORDERS** and **DECLARES** that, notwithstanding paragraph [15] hereof, the following Encumbrances against the following property of the Debtor shall rank ahead of and in priority to the Charges:

- (a) specific machinery and equipment described in the following:

<u>Deed</u>	<u>Publication No.</u> (Registration)	<u>Date of Publication</u> (Registration)	<u>Secured Party</u>
Conventional Hypothec	13-0417365-0002	2013-05-21	Banque Royale du Canada
Conventional Hypothec	11-0624842-0008	2011-08-16	Banque Royale du Canada

- (b) tax credits described in the following:

<u>Deed</u>	<u>Publication No.</u> (Registration)	<u>Date of Publication</u> (Registration)	<u>Secured Party</u>
Conventional Hypothec	08-0477528-0001	2008-08-15	Banque Royale du Canada

[17] **ORDERS** that none of the Charges shall be effective or attach to any of the Property unless and until a certificate in or substantially in the form appended as **Schedule "A"** hereto (the "**Trustee's Certificate**") is filed with the Court confirming that the TD Bank has granted the "Bank Release", as defined in the Commitment Letter, and that the TD Bank has confirmed having obtained any and all necessary consents from Export Development Canada to the granting of such bank release.

[18] **DECLARES** that the Charges shall subsist without necessity of any publication, registration, recording, filing or perfection.

[19] **DECLARES** that, nothing herein contained shall affect any security interests or rights held by the TD Bank or any other creditor over any assets of the Debtor's wholly owned subsidiaries M0851 Products and Architectural Design Inc. and M0851 Trading (Beijing) Co. Ltd.

- [20] **ORDERS** that the Debtor shall not grant any encumbrances in or against any of the Property which ranks in priority to or *pari passu* with the Charges unless either the Court orders same or the beneficiaries of the Interim Financing Charge and the Administration Charge consent in writing thereto.
- [21] **DECLARES** that the Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: **(i)** these proceedings and any declaration of insolvency made herein; **(ii)** any petition for a receiving order filed pursuant to the *BIA* in respect of the Debtor or any receiving order made or deemed to be made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor; or **(iii)** any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtor (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the Charges shall not create or be deemed to constitute a breach by the Debtor of any Third Party Agreement to which it is a party; and
 - (b) any of the beneficiaries of the Charges shall not have liability to any person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the Charges.
- [22] **DECLARES** that the claims of the respective parties pursuant to the Charges shall not be compromised pursuant to these proceedings, any proposal filed pursuant to the *BIA* (a "**Proposal**") or any plan of arrangement filed pursuant to the *Companies' Creditors Arrangement Act*, Canada (a "**Plan**") and the beneficiaries of the Charges, in such capacity, shall each be treated as an unaffected creditor in these proceedings and in any Proposal or Plan.
- [23] **DECLARES** that notwithstanding: **(i)** these proceedings and any declaration of insolvency made herein, **(ii)** any petition for a receiving order filed pursuant to the *BIA* in respect of the Debtor and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor, and **(iii)** the provisions of any federal or provincial statute, the payments or disposition of Property made by the Debtor pursuant to this Order and the granting of the Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
- [24] **DECLARES** that the Charges shall be valid and enforceable as against all Property and against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Debtor, for all purposes.



- [25] **ORDERS** the Registrar of the RDPRM, upon application by the beneficiaries of the Interim Financing Charge or the Administration Charge, to register in the RDPRM, the Charges created by this Order against the Property situated in the province of Quebec.
- [26] **ORDERS** the Registrar of the Ontario Personal Property Registry (the "**OPPR**"), upon application by the beneficiaries of the Interim Financing Charge or the Administration Charge, to register in the OPPR, financing statements or otherwise in respect of the Charges created by this Order against the Property situated in the province of Ontario.

GENERAL

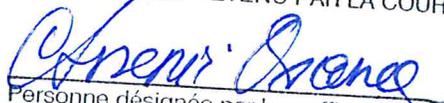
- [27] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [28] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
- [29] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS.

KUGLER KANDESTIN LLP
Me Gerald F. Kandestin
Me Jeremy Cuttler
Attorneys for the Debtor/Petitioner



COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR


Personne désignée par le greffier

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO.: 500-11-053292-179
ESTATE NO.: 41- 2297864

SUPERIOR COURT
(Commercial Division)
*(Bankruptcy and Insolvency Act, R.S.C.
1985, c. B-3)*

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:

175413 CANADA INC. (operating under the
trade name M0851);

Debtor/Petitioner

-and-

KPMG INC.;

Trustee

-and-

THE PARTIES LISTED IN THE SERVICE
LIST

Mises-en-causes

TRUSTEE'S CERTIFICATE

WHEREAS on October 1, 2017, the Commercial Division of the Superior Court of Québec for the District of Montréal issued an order (the "**Order**") pursuant to the *Bankruptcy and Insolvency Act*, Canada authorizing and issuing an Interim Financing Charge, in order to secure indebtedness and obligations under the therein defined "Commitment Letter" (the "**Commitment Letter**"), and an Administration Charge (collectively the "**Charges**"), which charges will become effective and attach to the therein defined "Property" upon the filing of the present certificate (the "**Trustee's Certificate**") by the trustee, KPMG Inc. (the "**Trustee**");

WHEREAS, pursuant to the Order, the Trustee's Certificate may only be issued and filed by the Trustee upon confirmation that The Toronto-Dominion Bank (the "**TD Bank**") has granted the "Bank Release" as defined in the Commitment Letter (the "**Bank Release**") and that the TD Bank has confirmed having obtained any and all necessary consents from Export Development Canada ("**EDC**") to the granting of such Bank Release; and

WHEREAS, unless otherwise defined, capitalized terms found herein shall have the same meaning ascribed thereto in the Order.

THE TRUSTEE CERTIFIES that:

- (a) it has received confirmation that TD Bank has granted the Bank Release;

- (b) TD Bank has confirmed having obtained any and all necessary consents from EDC to the granting of the Bank Release; and
- (c) pursuant to the Order, all of the therein created Charges are now effective and attach to all of the Property.

This certificate issued by the Trustee at _____:_____ on _____, 2017.

KPMG INC., in its capacity as Trustee, and not in its personal capacity.

Name: _____

Title: _____