

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

S U P E R I O R C O U R T  
(Commercial Division)

No.: 500-11-053409-179  
540-11-009942-170

IN THE MATTER OF THE RECEIVERSHIP  
OF:

ARTEMANO CANADA INC., a legal person  
having its domicile at 1816 Le Corbusier Boulevard,  
in the city of Laval, province of Quebec

**Debtor/Respondent**

-and-

ROYAL BANK OF CANADA, a legal person  
having a place of business at 1 Place Ville Marie,  
9th Floor, in the city of Montréal, province of  
Quebec

**Petitioner**

-and-

KPMG INC., a legal person having a place of  
business at Tour KPMG, 600 de Maisonneuve  
Boulevard West, Suite 1500, in the city of Montreal,  
province of Quebec

**Receiver**

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MOTION FOR THE APPOINTMENT OF A RECEIVER  
(Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"))

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TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF  
MONTREAL, OR TO THE REGISTRAR OF THIS COURT, ROYAL BANK OF  
CANADA RESPECTFULLY SUBMITS THE FOLLOWING:

1. INTRODUCTION

1. By the present Motion for the Appointment of a Receiver (the "**Motion**"), the Royal Bank of Canada (the "**Bank**") seeks, *inter alia*, the appointment of KPMG Inc. ("**KMPG**") (Dev A. Coossa, CIRP, authorized representative) to act as receiver to the assets of Artemano Canada Inc. (the "**Debtor**").

2. **FACTUAL BACKGROUND**

2. The Bank is a Canadian chartered bank duly constituted and having a place of business at 1, Place Ville Marie, 9th Floor, in the city of Montréal, province of Quebec.
3. In the normal course of business, the Bank had business dealings with the Debtor, being the Debtor's banker and most important secured creditor.
4. The Debtor is involved in the importation and retail sale of wooden furniture and accessories, the whole as appears from a copy of the *État de renseignements d'une personne morale au registre des entreprises* communicated herewith as **Exhibit R-1**.
5. On or about June 9, 2016, the Debtor, as borrower, entered into a credit facilities letter with the Bank, as lender (the "**Facility Letter**"), providing for various credit facilities, the whole as appears from a copy of the Facility Letter communicated herewith as **Exhibit R-2**.
6. The Debtor's obligations under the Facility Letter are secured by, *inter alia*, movable hypothecs charging all of the movable property of the Debtor, the whole as appears from a copy of the movable hypothecs communicated herewith *en liasse* as **Exhibit R-3**.

3. **EVENTS LEADING TO THE PRESENT MOTION**

7. In September of 2017, the Bank was made aware that the Debtor was in default under the Facility Letter, notably in that:
  - (a) it did not comply with the margin requirements set out in the Facility Letter;
  - (b) it was insolvent within the meaning of the *BIA*; and
  - (c) it intended to file a notice of intention to make a proposal under the *BIA*.
8. As a result of the aforementioned defaults, the Debtor and the Bank entered into a forbearance agreement as of September 26, 2017 (the "**Forbearance Agreement**"), as appears from a copy of the Forbearance Agreement communicated herewith as **Exhibit R-4**.
9. Pursuant to the Forbearance Agreement, the Debtor undertook, *inter alia*, to abide by and respect the cash flow projections that were attached thereto, not to incur a margin deficit greater than the margin deficit that existed as at September 26, 2017 and to cause the margin deficit to decrease gradually during the months of September and October 2017.
10. Concurrently with the execution of the Forbearance Agreement, the Bank required the immediate repayment of its indebtedness and issued a notice under section 244 of the *BIA* and a prior notice of the exercise of the hypothecary right of sale by judicial authority, the whole as appears from a copy of the said notices communicated herewith *en liasse* as **Exhibit R-5**.

11. Contemporaneously with the execution of the Forbearance Agreement, the Debtor waived the 10-day delay set forth in section 244 of the *BIA*, as appears from a copy of the notice under section 244 of the *BIA* (Exhibit R-5).
12. On September 29, 2017, the Debtor filed a notice of intention to make a proposal under the *BIA* in the district of Laval and KPMG was named as trustee thereunder, as appears from the Court record.
13. On October 23, 2017, by order of the registrar of the Superior Court, district of Laval, the proceedings related to the Debtor's notice of intention to make a proposal were transferred to the district of Montreal, as appears from the Court record.
14. Throughout the month of October, 2017, the Debtor breached certain provisions of the Forbearance Agreement. Notably, the Debtor:
  - (a) did not abide by and respect the cash flow projections attached to the Forbearance Agreement and did not operate its business so as to remain within these parameters, contrary to section 5.5 of the Forbearance Agreement; and
  - (b) incurred a margin deficit greater than the margin deficit that existed as at the date of the execution of the Forbearance Agreement, contrary to section 5.5 of the Forbearance Agreement;(collectively, the "**Forbearance Defaults**").
15. On October 26, 2017, the Bank sent a letter to the Debtor, advising it of the occurrence of the Forbearance Defaults and requesting that it submit to the Bank its plan to correct the Forbearance Defaults, failing which the Bank would be entitled to exercise all of its rights and recourses without further notice, as appears from a copy of this letter communicated herewith as **Exhibit R-6**.
16. On October 27, 2017, this Court extended the delay for the Debtor to file a proposal until December 13, 2017, as appears from the Court record.
17. As at the date of the present Motion, the Debtor has failed to correct the Forbearance Defaults despite several promises to do so and the margin deficit has continued to increase. As at the date of the present Motion, the margin deficit exceeds the margin deficit that existed as at the date of the Forbearance Agreement by an amount of approximately \$800,000.
18. In addition, the Debtor has failed to meet the sale targets set forth in the cash flow projections attached to the Forbearance Agreement.
19. On November 9, 2017, the trustee under the notice of intention informed the Bank that one of the directors of the Debtor, Lorenzo Salvaggio, no longer works for the Debtor and that the Debtor contemplates to cease all operations starting on November 9, 2017.

4. **REASONS TO APPOINT A RECEIVER**

20. As at November 9, 2017, the Debtor is indebted to the Bank in an amount of at least CDN\$7,536,155.99, the whole as more fully appears from a statement of account communicated herewith as **Exhibit R-7**.
21. The Bank's hypothecs charge all of the movable property of the Debtor.
22. The Debtor is in default towards the Bank as a result of the Forbearance Defaults.
23. The Bank's position has deteriorated significantly since the filing of the notice of intention given the increased margin deficit. The Bank cannot tolerate a further deterioration of its position.
24. The Debtor will not be able to make a viable proposal.
25. The Bank has issued a notice under section 244 of the *BIA* and the Debtor has waived the 10-day delay set forth therein.
26. The Debtor does not object to the appointment of a receiver.

5. **CONCLUSIONS**

27. In light of the foregoing, the Bank hereby respectfully seeks the issuance of an Order substantially in the form of the draft order communicated herewith as **Exhibit R-8**.
28. The Bank proposes that KPMG, through its representative, Dev A. Coossa, CIRP, act as a receiver.
29. KPMG is qualified to act as receiver in this matter as it holds a licence to act as trustee under the *Bankruptcy and Insolvency Act*, and has agreed to act in this matter if appointed by this Court.
30. It is especially appropriate that KPMG be appointed as receiver as it is already familiar with the business and operations of the Debtor, due to its current involvement as trustee under the notice of intention.
31. Given the urgency of the situation, the Bank is well-founded to ask this Court that any delay of service or presentation of the present Motion be shortened, if need be.
32. The present Motion is well-founded in fact and in law.

**WHEREFORE THE BANK REQUESTS THAT THIS HONOURABLE COURT:**

- [1] **GRANT** the present *Motion for the Appointment of a Receiver* (the "**Motion**");
- [2] **ISSUE** an order in the form of the draft Order communicated in support of the Motion as **Exhibit R-8**;

[3] **WITHOUT COSTS**, save and except in case of contestation.

**MONTREAL**, November 9, 2017

Davies Ward Phillips & Vineberg LLP

**DAVIES WARD PHILLIPS & VINEBERG LLP**

Attorneys for the Petitioner, Royal Bank of  
Canada

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

S U P E R I O R C O U R T  
(Commercial Division)

No.:

IN THE MATTER OF THE RECEIVERSHIP  
OF:

ARTEMANO CANADA INC.

Debtor/Respondent

-and-

ROYAL BANK OF CANADA

Petitioner

-and-

KPMG INC.

Receiver

AFFIDAVIT OF STÉPHANE PÉLADEAU

I, the undersigned, Stéphane Péladeau, exercising my occupation at 1, Place Ville Marie, 9th Floor, Montreal, Quebec, solemnly declare as follows:

1. I am a Director, Special Loans, for the Petitioner, Royal Bank of Canada;
2. All the facts alleged in the present *Motion for the Appointment of a Receiver* are true.

AND I HAVE SIGNED:



Stéphane Péladeau

SOLEMNLY DECLARED BEFORE ME,  
in the City of Montreal, Province of Quebec  
on this 9th day of November, 2017



Commissioner of Oaths



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PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

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KPMG INC.

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Receiver

NOTICE OF PRESENTATION

TO: **STEIN & STEIN INC.**  
4101 Sherbrooke West  
Westmount, Quebec, H3Z 1A7  
Attorneys for the Debtor

TO: **KPMG INC.**  
600 de Maisonneuve Blvd. West  
Suite 1500  
Montreal, Quebec, H3A 0A3  
Receiver

TO: **FASKEN MARTINEAU DUMOULIN**  
800 Place Victoria  
Suite 3700  
Montreal, Quebec, H4Z 1E9  
Attorneys for Development Bank of Canada

TAKE NOTICE that the attached *Motion for the Appointment of a Receiver* will be presented for adjudication before a Registrar sitting in the Commercial Division, in and for the judicial District of Montréal, at the Montréal Courthouse located at 1, Notre-Dame Street East, in the City of Montréal, Province of Québec, in room 16.10, on November 9, 2017 at 3:30 pm, or so soon thereafter as counsel can be heard.

**DO GOVERN YOURSELVES ACCORDING.**

MONTREAL, November 9, 2017

Davies Ward Phillips & Vineberg LLP

**DAVIES WARD PHILLIPS & VINEBERG LLP**

Attorneys for the Petitioner, Royal Bank of  
Canada



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KPMG INC.

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LIST OF EXHIBITS

- EXHIBIT R-1** Copy of the *État de renseignements d'une personne morale au registre des entreprises*;
- EXHIBIT R-2** Copy of the Facility Letter;
- EXHIBIT R-3** Copy of the movable hypothecs, *en liasse*;
- EXHIBIT R-4** Copy of the Forbearance Agreement;
- EXHIBIT R-5** Copy of the notice under section 244 of the *BIA* and the prior notice of the exercise of the hypothecary right of sale by judicial authority, *en liasse*;
- EXHIBIT R-6** Copy of the letter dated October 26, 2017;
- EXHIBIT R-7** Copy of the statement of account;
- EXHIBIT R-8** Copy of the draft Order.

MONTREAL, November 9, 2017

*Davies Ward Phillips & Vineberg LLP*

DAVIES WARD PHILLIPS & VINEBERG LLP

Attorneys for the Petitioner, Royal Bank of  
Canada

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**KPMG INC.**, a legal person having a place of business at Tour KPMG, 600, de Maisonneuve Boulevard West, Suite 1500, in the city of Montreal, province of Quebec

**Receiver**

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**MOTION FOR THE APPOINTMENT OF A  
RECEIVER, AFFIDAVIT, NOTICE OF  
PRESENTATION & EXHIBITS**

(Section 243 of the Bankruptcy and Insolvency Act,  
R.S.C. 1985, c. B-3 ("BIA"))

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**ORIGINAL**

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