

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

No.: 500-11-053409-179

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

IN THE MATTER OF THE RECEIVERSHIP  
OF:

ARTEMANO CANADA INC.

Debtor

- and -

KPMG INC.

Receiver

- and -

ROYAL BANK OF CANADA

Petitioner

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MOTION TO CONVEY CERTAIN ASSETS

(Sections 81(4) and 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:

**I     INTRODUCTION**

1. By the present *Motion to Convey Certain Assets* (the “**Motion**”), Royal Bank of Canada (the “**Bank**”) seeks, *inter alia*, the approval to convey certain assets to Rodi (as hereinafter defined) which were not claimed or collected by third parties.

**II    FACTUAL AND PROCEDURAL BACKGROUND**

2. Artemano Canada Inc. (the “**Debtor**”) was 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**.
3. The Bank was the Debtor’s operating lender and principal secured creditor.
4. 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**.

5. 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*.
6. 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-3**.
7. 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.
8. 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*, the whole as appears from a copy of the said notice communicated herewith *en liasse* as **Exhibit R-4**.
9. 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-4).
10. On September 29, 2017, the Debtor filed a notice of intention (the "**NOI**") to make a proposal under the *BIA* in the district of Laval and KPMG Inc. ("**KPMG**" or the "**Receiver**") was named as trustee thereunder, as appears from the Court record.
11. 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.
12. 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**”).

- 13. 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-5**.
- 14. 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.
- 15. On November 9, 2017, given that, amongst other, the Debtor failed to correct the Forbearance Defaults despite several promises to do so and the margin deficit continued to increase, the Bank sought the appointment of KPMG as receiver to the assets of the Debtor and an Order Appointing a Receiver (the “**Receivership Order**”) was granted, as appears from the Court record.
- 16. The Receivership Order also provides for a mechanism similar to section 81 *BIA* to return third party goods. Indeed, it appears that approximately 1259 orders (the “**Undelivered Orders**”) were paid by customers, but not delivered by the Debtor on the day of the issuance of the Receivership Order (the “**Third Party Goods**”).
- 17. On or around November 17, 2017, the Receiver sent to the customers who may own a Third-Party Goods a notice requiring them to prove their ownership within 15 days after the sending of the notice (the “**81 Notices**”), the whole in accordance with the Receivership Order and section 81(4) *BIA*.
- 18. Rodi Design Inc. (“**Rodi**”) submitted an offer to purchase all of the Debtor’s assets other than receivables (the “**Offer**”). Said offer was also for the Third Party Goods which would not be claimed or collected in accordance with section 81(4) of the *BIA* and the Receivership Order.
- 19. The Offer was considered to be the most favorable offer received for the reasons that follow:
  - (a) the Offer was not subject to any adjustment with respect to the inventory contrary to the other offers received;
  - (b) Rodi had offer at no charge to collaborate with the Receiver with respect to the return of the Third Party Goods;
  - (c) the offer was accompanied with a deposit representing approximately 96% of the purchase price; and

- (d) the purchase price of the Offer was more certain than the other offers received.
- 20. Accordingly, on November 23, 2017, KPMG accepted the Offer, subject to approval of this Court.
- 21. On November 29, 2017, this Court approved the transaction contemplated by the Offer.
- 22. On November 30, 2017, the transaction contemplated by the Offer was completed.
- 23. On December 13, 2017, the Debtor failed to seek an extension to file its proposal and thus was deemed bankrupt.

### **III THE THIRD PARTY GOODS**

- 24. Pursuant to the receipt of the 81 Notices by the various customers:
  - (a) the Receiver received proof of property for approximately 829 of the 1259 Undelivered Orders within the legal delay;
  - (b) the Receiver returned to the customers' approximately 580 orders (or partial orders);
  - (c) approximately 405 orders were not claimed by anyone; and
  - (d) approximately 200 orders were not collected (or fully collected) by the customers despite the receipt of a proof of claim by the Receiver.

as it will appear in further details in the Report of the Receiver to be filed in support of the present motion as **Exhibit R-6**.

- 25. Pursuant to section 81(4) and the Receivership Order, the Receiver is now entitled to sell the assets which were not claimed (within the legal timeframe) or collected by the customers (the "**Unclaimed Third Party Goods**"). However, since said goods were already included in the Offer, the Receiver and the Petitioners are only hereby seeking an order conveying the title to said Unclaimed Third Party Goods to Rodi.

### **IV CONCLUSIONS SOUGHT**

- 26. In light of the foregoing, the Bank hereby respectfully seeks the issuance of an order conveying to Rodi the Unclaimed Third Party Goods.
- 27. The present Motion is well-founded in fact and in law.

### **WHEREFORE THE PETITIONER REQUESTS THAT THIS HONOURABLE COURT:**

- [1] **GRANT** the present *Motion to Convey Certain Assets* (the "**Motion**");
- [2] **ORDER** and **DECLARE** that all rights, title and interest in and to the Unclaimed Third Party Goods (as defined at paragraph 25 of the Motion) shall vest absolutely and

exclusively in and with Rodi Design Inc., free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claim, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the “**Encumbrances**”), including without limiting the generality of the foregoing all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the Ontario Personal Property Security Act, or any other applicable legislation providing for a security interest in personal or movable property.

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

MONTREAL, December 19, 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

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Debtor/Respondent

-and-

KPMG INC.

Receiver

-and-

ROYAL BANK OF CANADA

Petitioner

NOTICE OF PRESENTATION

TO: KPMG INC.  
C/O Mr. Dev Coossa  
600 de Maisonneuve Blvd. West  
Suite 1500  
Montreal (Québec) H3A 0A3  
Receiver/Trustee in Bankruptcy

AND: FASKEN MARTINEAU DUMOULIN  
C/O Mtre. Marc-André Morin  
800 Place Victoria  
Suite 3700  
Montreal (Québec) H4Z 1E9  
Attorneys for Development Bank of Canada

TAKE NOTICE that the attached *Motion to Convey Certain Assets* 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 December 21, 2017 at 8:45, or so soon thereafter as counsel can be heard.

DO GOVERN YOURSELVES ACCORDING.

MONTRÉAL, December 19, 2017

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP  
Attorneys for the Petitioner, Royal Bank of  
Canada

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LIST OF EXHIBITS

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- 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 Forbearance Agreement;
- EXHIBIT R-4 Copy of the notice under section 244 of the *BIA*;
- EXHIBIT R-5 Copy of the letter dated October 26, 2017;
- EXHIBIT R-6 Copy of the Receiver's Report.

MONTREAL, December 19, 2017

*Davies Ward Phillips & Vineberg LLP*

DAVIES WARD PHILLIPS & VINEBERG LLP  
Attorneys for the Petitioner, Royal Bank of  
Canada

No. 500-11-053409-179  
**SUPERIOR COURT**  
Commercial Division  
District of Montréal

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Debtor/Respondent

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KPMG INC.

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**MOTION TO CONVEY CERTAIN ASSETS,  
AFFIDAVIT, NOTICE OF PRESENTATION  
AND LIST OF EXHIBITS**  
(Sections 81(4) and 243 of the *Bankruptcy and  
Insolvency Act*, R.S.C. 1985 c. B-3 ("BIA"))

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**ORIGINAL**

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