

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies'*
Creditors Arrangement Act, R.S.C. 1985, c. C-36, as
amended)

N^o: 500-11-057549-194

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

9227-1584 QUÉBEC INC.

-and-

9336-9262 QUÉBEC INC.

Debtors

-and-

KPMG INC.

Petitioner / Monitor

-and-

110302 CANADA INC.

-and-

9325-7277 QUÉBEC INC.

Mises en cause

**MOTION FOR AN EXTENSION OF THE STAY OF PROCEEDINGS AND FOR THE
ISSUANCE OF AN AMENDED AND RESTATED INITIAL ORDER**
(Sections 11 and 11.02 of the *Companies' Creditors Arrangement Act* ("**CCAA**")

**TO THE HONOURABLE JUSTICE PETER KALICHMAN, J.S.C. OR ANOTHER ONE OF THE
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL
DIVISION FOR THE DISTRICT OF MONTRÉAL, PETITIONER / MONITOR, KPMG INC.,
SUBMITS AS FOLLOWS:**

1. INTRODUCTION

1. KPMG Inc. ("**KPMG**") brings this Motion in its capacity as Monitor of the Debtors, 9227-1584 Québec Inc. ("**9227**") and 9336-9262 Québec Inc. ("**9336**"; collectively with 9227, the "**Debtors**"), with expanded powers pursuant to the Initial Order rendered by the Honourable Peter Kalichman, J.S.C. on November 22, 2019 (the "**Initial Order**").

2. The initial ten-day stay of proceedings granted pursuant to the Initial Order will expire on December 2, 2019 (the “**Stay Period**”), such that KPMG hereby seeks the extension of the Stay Period to December 20, 2019.
3. Additionally, since the Initial Order was limited to the relief that was reasonably necessary for the initial ten-day Stay Period, pursuant to section 11.001 of the CCAA, KPMG now seeks additional relief that will be necessary to adequately fulfill its role as Monitor going forward, as elaborated further below.

2. BACKGROUND

4. The factual background in support of the relief sought herein can be found in the Motion for an Initial Order (as defined herein) and the exhibits in support thereof, the entirety of which is expressly deemed to be incorporated herein by reference as if restated at length.

2.1 QBCA Order

5. On October 8, 2019, with the consent of all parties, the honourable Martin Castonguay, J.C.S. appointed KPMG as administrative agent and manage over the assets and property of the Debtors pursuant to an *Order Appointing an Administrative Agent and Manager and Issuing Other Orders for Redress*, as rectified on October 9, 2019 (the “**QBCA Order**”), in Superior Court file number 500-11-057283-190, as appears from the QBCA Order communicated herewith as **Exhibit R-1**, *en liasse*.
6. The QBCA Order was issued following the filing by the Mise en cause 110302 Canada Inc. and its representative Arthur Steckler of an *Originating Motion for the Appointment of an Administrative Agent and Manager and for the Issuance of Other Orders for Redress* (the “**QBCA Motion**”), seeking, *inter alia*, the appointment of KPMG as administrative agent and manager, with powers tantamount to those of a receiver pursuant to the applicable provisions of the *Business Corporations Act*¹ (“**QBCA**”).
7. Although the Mise en cause 9325-7277 Québec Inc. and its representative Marc-André Nadon contested the allegations of the QBCA Motion, it was agreed by all parties that the appointment of KPMG as administrative agent and manager was necessary as a result of a deadlock between the Mises en cause and their respective representatives, Mr. Steckler and Mr. Nadon. The parties therefore consented to the issuance of the QBCA Order (Exhibit R-1), as appears therefrom.
8. The *raison d’être* of the QBCA Order (Exhibit R-1) was to allow KPMG to manage, protect and maximize the value of the Debtors’ property (the “**Property**”), in light of the apparent deadlock between the Mises en cause, while at the same time attempting to market and sell the Property if deemed necessary or advisable.

2.2 Commencement of CCAA Proceedings

9. Following the issuance of the QBCA Order (Exhibit R-1) and the entry of KPMG into its functions thereunder, it became apparent to KPMG that the Debtors are insolvent, and

¹ CQLR c. S-31.1, ss. 450 and 451.

that the proper continuation or restructuring of the Debtors' operation requires both additional liquidities and a stay of proceedings.

10. In particular, despite the value of the Property, the Debtors are suffering from an immediate lack of liquidity and are therefore generally unable to meet their obligations as they generally come due at the present time.
11. Therefore, KPMG, in its capacity as administrative and manager of the Debtors pursuant to the QBCA Order filed a Motion for the Issuance of an Initial Order (the "**Motion for an Initial Order**") in respect of the Debtors on November 20, 2019, as appears from the Motion for an Initial Order appearing in the Court record and communicated herewith for convenience as **Exhibit R-2**.
12. Upon hearing the Motion for an Initial Order, the Honourable Peter Kalichman, J.S.C. issued the Initial Order herein on November 22, 2019, as appears from the Initial Order, as rectified on November 25, 2019, which appears in the Court record and is communicated herewith for convenience as **Exhibit R-3**.
13. As mentioned above, the Stay Period granted in the Initial Order was limited to ten days pursuant to the recent amendment of s. 11.02(1) of the CCAA.
14. Additionally, the relief granted by the Initial Order was limited to what was reasonably necessary during the initial ten-day Stay Period pursuant to the newly added s. 11.001 of the CCAA.
15. At the hearing of the Motion for an Initial Order, KPMG undertook to prepare a table that clearly identifies which lots of the Project Properties (as defined in the Motion for an Initial Order (Exhibit R-2)) remain unsold and property of 9227, and which are subject to offers to purchase that have not yet closed. This table is communicated herewith as **Exhibit R-4**.

3. RELIEF SOUGHT

16. In light of the foregoing, and in reliance on the allegations made in the Motion for an Initial Order (Exhibit R-2) and the exhibits filed in support thereof, KPMG hereby seeks the issuance of an Amended and Restated Initial Order substantially in the form of the draft order communicated herewith as **Exhibit R-5** (the "**Draft Amended and Restated Initial Order**").
17. A blackline comparing the Draft Amended and Restated Initial Order (Exhibit R-5) against the Initial Order (Exhibit R-3) is communicated herewith as **Exhibit R-5A**.
18. In particular, KPMG seeks the following relief pursuant to the Draft Amended and Restated Initial Order (Exhibit R-5):
 - a) the restatement of the relief ordered pursuant to the Initial Order (Exhibit R-3);
 - b) an extension of the Stay Period until December 20, 2019, in order to allow it to secure interim financing required for the restructuring of the Debtors and to return to this Court for the approval thereof;

- c) the right to permanently or temporarily cease, downsize or shut down any of the Debtors' operations or locations as it deems appropriate and make provision for the consequences thereof in an eventual plan of compromise or arrangement to be submitted to the Debtors' creditors;
 - d) the right, subject to section 11.3 of the CCAA, to assign any rights and obligations of the Debtors;
 - e) the authorization and empowerment to exercise certain powers of investigation in respect of the Debtors, and the granting of powers related thereto;
 - f) the establishment of procedural rules that will govern the conduct of these CCAA proceedings; and
 - g) the extension of confidentiality to cover Exhibit R-4 to the Motion for an Initial Order (Exhibit R-2), which was ordered in the minutes of the hearing of the Motion for an Initial Order, communicated herewith for convenience as **Exhibit R-6**, but was inadvertently not reflected in the Initial Order (Exhibit R-3).
19. These powers are necessary for KPMG to adequately fulfill its role as Monitor, in order to operate the Debtors' business as necessary and ensure a successful restructuring.
20. In particular, the powers of investigation are necessary because KPMG, not being the Debtors themselves, may urgently require information to which it does not have direct access for the purpose of the Debtors' restructuring.
21. For the duration of the Stay Period being sought KPMG intends to principally accomplish the following:
- a) continue to manage and ensure the stability of the Debtors' business, as it has done since the issuance of the QBCA Order;
 - b) seek or solicit interim (DIP) financing opportunities and negotiate the terms of such interim financing;
 - c) continue its analysis of the nature and status of the operations, being the development of the Square Candiac project;
 - d) interface with various stakeholders, including, *inter alia*, the City of Candiac, the Mises en cause and this principals, as well as secured creditors, prospective purchasers, and counterparties to various contracts (including deeds of sale and offers to purchase), in order to, *inter alia*, better understand and circumscribe their respective positions and potential claims;
 - e) commence the process of analyzing the existence, validity and quantum of various secured and unsecured claims against 9227 or involving the property of the Debtors, and pursue the payment of any sums due to the debtors;
 - f) generally oversee and, if it considers advisable, provide assistance in relation to Debtors' involvement in the proceedings for a partition of the respective of beneficial interests of the undivided co-owners in the property of 9227; and

- g) commence analysis of the opportunity of selling certain property of the debtors;
and
 - h) such other matters that may arise throughout the process.
22. In view of the urgency and severity of the circumstances confronting the Debtors, it is essential that execution of the order requested be granted notwithstanding appeal.
23. The present Motion is well-founded in fact and in law.

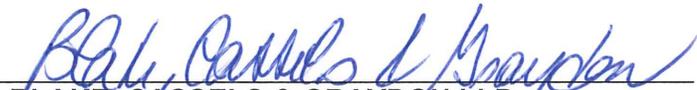
FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion for an Extension of the Stay of Proceedings and for the Issuance of an Amended and Restated Initial Order*;

ISSUE an Amended and Restated Initial Order in the form of the Draft Amended and Restated Initial Order communicated in support hereof as Exhibit R-5;

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

Montréal, November 28, 2019



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(Court Code: BB-8098)

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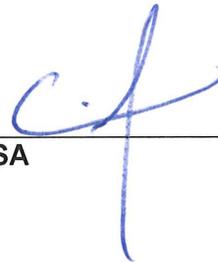
Fax: 514-982-4099

Our reference: 72396-22

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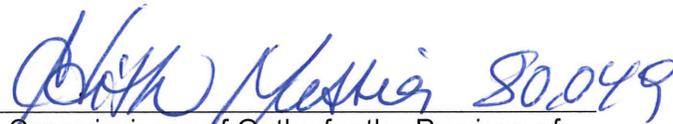
I, the undersigned, **Dev Coossa**, LIT, CIRP, practicing my profession at KPMG Inc., having a place of business at 1500-600 De Maisonneuve Blvd. West, in the city of Montréal, Québec, solemnly affirm that all the facts alleged in the present *Motion for an Extension of the Stay of Proceedings and for the Issuance of an Amended and Restated Initial Order* are true.

AND I HAVE SIGNED:



DEV COOSSA

SOLEMNLY DECLARED before me
at Montréal, Québec
this 28th day of November, 2019



Commissioner of Oaths for the Province of
Québec



NOTICE OF PRESENTATION

To: SERVICE LIST

TAKE NOTICE that the present *Motion for an Extension of the Stay of Proceedings and for the Issuance of an Amended and Restated Initial Order* will be presented for adjudication before the Honourable Peter Kalichman, J.S.C., or another Justice of the Superior Court of Québec, sitting in the commercial division for the district of Montréal on **December 2, 2019** or so soon thereafter as counsel may be heard, at the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6, at a time and in a room to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, November 28, 2019



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DISTRICT OF **MONTREAL**

SUPERIOR COURT

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LIST OF EXHIBITS

(in support of the *Motion for an Extension of the Stay of Proceedings and for the Issuance of an Amended and Restated Initial Order*)

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- | | |
|-------------|---|
| R-1 | QBCA Order (October 8, 2019) |
| R-2 | Motion for an Initial Order (November 20, 2019) |
| R-3 | Initial Order (November 22, 2019) |
| R-4 | Table identifying which lots of the Project Properties remain to be sold and which are subject to offers to purchase that have not yet closed |
| R-5 | Draft Amended and Restated Initial Order |
| R-5A | Blackline comparing the Draft Amended and Restated Initial Order (Exhibit R-5) against the Initial Order (Exhibit R-3) |
| R-6 | Minutes of the hearing of the Motion for an Initial Order (November 22, 2019) |

The exhibits can be downloaded at the following link:

<https://blakes.sharefile.com/d-s31aa77d1a454370b>

Montréal, November 28, 2019



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(Sections 11 and 11.02 of the CCAA)

ORIGINAL

The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.

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