

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)

Nº: 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.

-and-

**THE REGISTRAR OF THE LAND REGISTRY
OFFICE OF LAPRAIRIE**

Mises en cause

**MOTION TO RECTIFY THE *SECOND AMENDED AND RESTATED INITIAL
ORDER* AND ORDER THE LAND REGISTRAR TO PROCEED WITH THE
REGISTRATION OF THE INTERIM LENDER CHARGE**

**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. On October 8, 2019, the Petitioner / Monitor herein, KPMG Inc. ("**KPMG**"), was appointed as administrative agent and manager over the assets and property of the Debtors 9227-1584 Québec Inc. ("**9227**") and 9336-9262 Québec Inc. ("**9336**"; collectively with 9227, the "**Debtors**") with powers tantamount to those of a receiver pursuant to the applicable provisions of the *Business Corporations Act*¹, 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**"), as appears from the Court record.
2. On November 20, 2019, 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 pursuant to the CCAA, as appears from Court record.
3. On November 22, 2019, the Honourable Peter Kalichman, J.S.C. issued an *Initial Order* herein (as rectified on November 25, 2019 and amended and restated on December 2, 2019) (the "**Amended and Restated Initial Order**").
4. On January 30, 2020, this Honourable Court issued a *Second Amended and Restated Initial Order* (the "**Restated Initial Order**"²) pursuant to the CCAA to the Debtors and the Mises en cause, as appears from the Restated Initial Order communicated herewith as **Exhibit R-1**.
5. Pursuant to the Restated Initial Order, *inter alia*:
 - a) all of the Property of 9227, with the exception of the Registry Office, is subject to a charge and security for an aggregate amount of \$5,000,000.00 in favour of the Interim Lender as security for all obligations of 9227 to the Interim Lender with respect to all amounts owing under or in connection with the Interim Financing Agreement and the Interim Financing Documents;
 - b) the Interim Lender Charge rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind affecting the Property, with the exception of the Administration Charge and the securities provided for in paragraph 60 of the Restated Initial Order; and
 - c) The Interim Lender Charge, along with the Administration Charge, attached, as of 12:01 a.m., on January 30, 2020, to all present and future Property of the Debtors, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

¹ CQLR c. S-31.1, ss. 450 and 451.

² All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Restated Initial Order (as defined herein).

6. On February 21, 2020, KPMG was made aware that the Quebec Land Registry refused to proceed with the registration of the Interim Lender Charge in accordance with the Restated Initial Order due to the absence of instructions to the registrar to register the Interim Lender Charge, as appears from an email sent to the Petitioner's attorneys from the firm acting on behalf of the Caisse Populaire Desjardins de Terrebonne and the notice of refusal received from the Quebec Land Registry communicated herewith, *en liasse*, as **Exhibit R-2**.

2. **REQUESTED RECTIFICATION AND ORDER**

7. KPMG therefore seeks that this Court rectify the Restated Initial Order by adding the following conclusion to **Section L. Interim Financing (DIP)**:

[35].1 **ORDERS** and **GIVES INSTRUCTIONS** to the Land Registrar of the registration division of Laprairie, upon payment of the required monies and upon production of a true copy of this judgment (and any other document ancillary to this judgment which may be presented to him), to accept this certified true copy for registration in the appropriate register, of a charge and hypothec in favour of the Interim Lender in the amount of \$5,000,000 on the lots 6 022 113, 6 022 115, 6 022 117, 6 022 119, 6 022 120, 6 022 121, 6 022 122, 6 073 666, 6 073 693, 6 073 694, 6 265 849 and 2 094 091 at the Land Register, as may have been or may eventually be subdivided, in accordance with the Restated Initial Order.

3. **CONCLUSIONS**

8. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion to Rectify the Second Amended and Restated Initial Order and Order the Land Registrar to Proceed with the Registration of the Interim Lender Charge*;

AMEND the *Second Amended and Restated Initial Order* rendered herein on January 30, 2020, by adding the following conclusion:

[35].1 **ORDERS** and **GIVES INSTRUCTIONS** to the Land Registrar of the registration division of Laprairie, upon payment of the required monies and upon production of a true copy of this judgment (and any other document ancillary to this judgment which may be presented to him), to accept this certified true copy for registration in the appropriate register and to proceed with the registration of a charge and hypothec in favour of the Interim Lender in the amount of \$5,000,000 on the lots 6 022 113, 6 022 115, 6 022 117, 6 022 119, 6 022 120, 6 022 121, 6 022 122, 6 073 666, 6 073 693, 6 073 694, 6 265 849 and 2 094 091 at the Land Register, as may have been or may eventually be subdivided.

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

Montréal, March 12, 2020

Blake, Cassels & Graydon

BLAKE, CASSELS & GRAYDON LLP

Attorneys for the Petitioner / Monitor

(Court Code: BB-8098)

1 Place Ville-Marie, Suite 3000

Montréal, Québec H3B 4N8

M^{re} Bernard Boucher

bernard.boucher@blakes.com

Telephone: 514-982-4006

M^{re} Sébastien Guy

sebastien.guy@blakes.com

Telephone: 514-982-4020

M^{re} Adam T. Spiro

adam.spiro@blakes.com

Telephone: 514-982-5074

Fax: 514-982-4099

Our reference: 72396-22

AFFIDAVIT

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 to Rectify the Second Amended and Restated Initial Order and Order the Land Registrar to Proceed with the Registration of the Interim Lender Charge* are true.

AND I HAVE SIGNED:



DEV COOSSA

SOLEMNLY DECLARED before me
at Montréal, Québec
on March 12, 2020



Commissioner of Oaths for the Province
of Québec



NOTICE OF PRESENTATION

To: SERVICE LIST

TAKE NOTICE that the present *Motion to Rectify the Second Amended and Restated Initial Order and Order the Land Registrar to Proceed with the Registration of the Interim Lender Charge* 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, at a date, a time and in a room of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6 to be further announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, March 12, 2020



BLAKE, CASSELS & GRAYDON LLP

Attorneys for the Petitioner / Monitor
(Court Code: BB-8098)

1 Place Ville-Marie, Suite 3000
Montréal, Québec H3B 4N8

M^{tr}e Bernard Boucher

bernard.boucher@blakes.com

Telephone: 514-982-4006

M^{tr}e Sébastien Guy

sebastien.guy@blakes.com

Telephone: 514-982-4020

M^{tr}e Adam T. Spiro

adam.spiro@blakes.com

Telephone: 514-982-5074

Fax: 514-982-4099

Our reference: 72396-22

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

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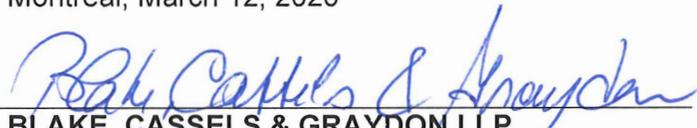
Mises en cause

LIST OF EXHIBITS

(in support of the *Motion to Rectify the Second Amended and Restated Initial Order and Order the Land Registrar to Proceed with the Registration of the Interim Lender Charge*)

- R-1 Restated Initial Order (January 30, 2020)
- R-2 *En liasse*, email from the firm acting on behalf of the Caisse Populaire Desjardins de Terrebonne sent on February 21, 2020 and the notice of refusal received from the Quebec Land Registry

Montréal, March 12, 2020



BLAKE, CASSELS & GRAYDON LLP

Attorneys for the Petitioner / Monitor

N°: 500-11-057549-194

**SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTREAL**

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9336-9262 QUÉBEC INC.**

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THE INTERIM LENDER CHARGE**

ORIGINAL

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

M^{tre}. Bernard Boucher
BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
1 Place Ville Marie
Suite 3000
Montréal, Québec H3B 4N8
Telephone: 514 982-4006
Fax: 514 982-4099
Email: bernard.boucher@blakes.com

BB-8098

Our File: 72396-22