

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
Companies' Creditors Arrangement Act

No: 500-11-063165-233

**IN THE MATTER OF THE COMPANIES
CREDITORS ARRANGEMENT ACT OF:**

KPMG INC.

Monitor

- and -

15695651 CANADA INC.

-and-

15695724 CANADA INC.

Debtors

-and-

TRADEX GROUP OF COMPANIES INC.

-and-

FTI CONSULTING CANADA INC. in its
capacity as receiver and manager of the
assets and undertakings of TradeX Groupe of
Companies Inc.

Mises-en-cause

**AMENDED APPLICATION FOR (I) ADVICE AND DIRECTIONS, (II) TO VOID A
TRANSFER AT UNDERVALUE OR, IN THE ALTERNATIVE (III) TO VOID A
PREFERENTIAL TRANSACTION**

(Sections 11 and 36.1 *Companies Creditors Arrangement Act* and Section 95 and 96
Bankruptcy and Insolvency Act)

**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OF THE SUPERIOR COURT,
SITTING IN COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE
MONITOR RESPECTFULLY SUBMIT AS FOLLOWS:**

1. By the present application (the “**Application**”), KPMG Inc. (the “**Monitor**”), in its capacity as Monitor of the Debtors, 15695724 Canada Inc. (“**ResidualCo 1**”) and 15695651 Canada Inc. (“**ResidualCo 2**”, and together with ResidualCo 1, the “**Current Debtors**”), seeks :
 - a) An order declaring that the Assignment of Credit made as of October 24, 2023 between 13517985 Canada Inc. (doing business as Wholesale Express, the “**Former Debtor**” or “**Wholesale Express**”) and the Mise-en-cause, TradeX Group of Companies Inc., filed herewith as **Exhibit R-1** (the “**Gregor Assignment**”), is null and void and may not be set up against the Monitor; and
 - b) Advice and directions from this honourable Court in the form of an order declaring that any right or claim held by the Former Debtor against Groupe Grégor Inc. (“**Gregor**”), including the claim in the amount of \$7,920,118 referred to in the Gregor Assignment as the “**Credit**”, is the property of ResidualCo 2.

I. PROCEDURAL BACKGROUND

2. On November 20, 2023, Highcrest Lending Corporation (“**Highcrest**”) filed an *Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* (the “**Initial Application**”) in the present proceedings (the “**CCAA Proceedings**”) in respect of the Former Debtor.
3. On December 20, 2023, following a series of interim measures, the Court granted the Initial Application and issued a first day initial order (the “**First Day Order**”).
4. On December 28, 2023, the Court issued an Amended and Restated Order extending the Stay Period until February 28, 2024 (the “**ARIO**”).
5. On January 9, 2023, the Monitor notified an *Application for an Approval and Reverse Vesting Order* (the “**Approval Application**”).
6. On January 12, 2023, the Court issued an *Approval and Reverse Vesting Order* (the “**RVO**”) *inter alia*:
 - a) authorizing a series of transactions whereby a new investor would become the sole shareholder of the Former Debtor, thereby preserving its business as a going concern;
 - b) vesting of all Excluded Assets and Excluded Contracts in ResidualCo 1, and all of the Excluded Liabilities in ResidualCo 2; and
 - c) declaring that, upon closing, the Former Debtor would cease to be a debtor in these CCAA Proceedings, and would be replaced by the Current Debtors.

7. The transactions described more fully in the RVO (collectively the “**RVO Transactions**”) closed on January 23, 2023, as appears from a copy of the Monitor’s certificate filed in the Court record.
8. As a result of the RVO Transactions:
 - a) The balance of the cash purchase price, net of the distributions authorized in the RVO, is currently held by the Monitor for and on behalf of ResidualCo 2;
 - b) Any eventual recoveries and other funds that may become available for distribution to creditors will be held by the Monitor for and on behalf of ResidualCo 2; and
 - c) All of the Former Debtor’s liabilities were transferred to ResidualCo 2.

I.1 PROCEDURAL HISTORY OF THIS APPLICATION

- 8.1. On February 15, 2024, the Monitor notified the Application for Directions and to Void a Transfer at Undervalue (the “**First Application**”) to the service list and, notably, to FTI Consulting inc., in its capacity as receiver pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (the “**Receiver**”) over the property of TradeX Group of Companies Inc. (“**ParentCo**”), TX Ops Canada Corporation (**Trade X Canada**), 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd (collectively the “**Trade X Group**”).
- 8.2. The First Application sought the annulment of the Gregor Assignment to ParentCo on the basis that it had been made between parties not dealing at arms length for no valuable consideration (see para. 16 and following, below). Indeed, based on the Monitor’s review of the books and records of the Trade X Group, there had been virtually no transactions between ParentCo and Wholesale Express and no other indication that any form of consideration was paid by ParentCo for the Gregor Assignment.
- 8.3. The hearing of the First Application was scheduled for July 16, 2024, 5 months after it was notified, to allow the Receiver time to determine its position on the First Application.
- 8.3. In the days leading up to the hearing of the First Application, the Receiver informed the Monitor of its intention to contest the First Application, and notified the following:
 - a) On July 8, 2024, an Application Record containing the transcript of Ryan Davidson’s examination held on June 28, 2024 in the TradeX Group receivership proceedings (the “**Examination**”);

- b) On July 10, 2024, a contestation of the First Application (the “**Contestation**”);
- c) On July 12, 2024, an Affidavit of Ryan Davidson (the “**Affidavit**”); and
- d) On July 16, 2024, the Receiver’s Plan of Arguments (the “**Receiver’s Arguments**”).

8.4. The Receiver’s Arguments, which were submitted during the night preceding the hearing of the First Application, alleged a new theory with respect to the alleged consideration provided by ParentCo in exchange for the Gregor Assignment. According to this new theory, although the books and records of the Former Debtor show that a portion of the purchase price for the Gregor business was paid by Trade X Canada, the amounts had been paid by ParentCo and merely flowed through Trade X Canada for administrative reasons. The effect of this, according to the Receiver, was that the Former Debtor was indebted to ParentCo for those amounts, not to Trade X Canada.¹

8.5. In the Monitor’s view, this new theory was not grounded in any of the evidence and ignored the commercial reality of the acquisition of Gregor’s business. In any event, even if one could ignore the plain facts and conclude that ParentCo was a creditor of the Former Debtor, the Gregor Assignment would nevertheless constitute a preferential payment/transaction between parties not dealing at arms length pursuant to section 95 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). In short, even if all of the facts alleged by the Receiver were true, the Gregor Assignment had to be annulled.

8.5. In light of the evolving state of the evidence and arguments raised, the hearing of the First Application was postponed to December 10, 2024 in order to, *inter alia*, allow the parties sufficient time to gather any evidence which may be required and amend the First Application to include a recourse pursuant to section 95 of the BIA, as reflected by this Amended Application.

II. THE GREGOR LITIGATION

9. The Former Debtor acquired the business of Wholesale Express from Gregor through an asset purchase transaction. Based on the information available to the Monitor, it appears an Asset Purchase Agreement was entered into in December 2021 and the transaction closed on or around June 1, 2022.

10. On or around October 13, 2023, Gregor filed legal proceedings against the Former Debtor and TadeX to claim what may be summarized as follows, the whole as appears from the *Demande introductive d’instance* and its Exhibits P-1 to P-7 filed herewith as **Exhibit R-2** (the “**Gregor Statement of Claim**”):

¹ As explained below at paragraph 21.1, this contradicted the position taken by the Receiver in its proof of claim filed as part of the claims process.

- a) \$767,210 stemming from an alleged change to closing date;
 - b) plus \$2,250,748 in working capital adjustments;
 - c) minus \$658,944.38 referred to in the Gregor Statement of Claim as a “**True-up Payment**”.
11. As appears from the Gregor Statement of Claim, Gregor operated Wholesale Express for a period of time while the Former Debtor obtained the necessary licenses and permits. The amounts collected by Gregor over the course of that period were to be remitted to the Former Debtor in the form of the True-up Payment.
 12. Whereas Gregor alleges that the True-up Payment should be \$658,944.38, the Former Debtor alleged in response to the Gregor Statement of Claim that it was, in fact, owed \$7,920,118 plus applicable interest (i.e. the Credit).
 13. The Former Debtor stated as follows in the case protocol filed in connection with the Gregor Statement of Claim (and filed herewith as **Exhibit R-3**) : “*Les défenderesses ont une demande reconventionnelle à faire valoir au montant de 7 920 118 \$ dû par la demanderesse à la défenderesse 13517985 Canada inc. à titre de sommes collectées par la demanderesse pour et au nom de la défenderesse 13517985 Canada inc. mais non remis à cette dernière à la suite de la transaction de vente des éléments d’actif intervenue entre les parties.*”
 14. These CCAA proceedings were initiated before the Former Debtor could file its cross-demand.
 15. If the claims of both sides are taken at face value, there is a net positive in favour of the Former Debtor in an amount of approximately \$5 million.

III. THE ASSIGNMENT OF CREDIT

16. Pursuant to the RVO Transactions, any rights and interests of the Former Debtor in the Credit and as against Gregor were transferred to ResidualCo 2.
17. That said, the existence of the Gregor Assignment has raised a question as to whether the Credit continues to be the property of Wholesale Express, or whether it was validly assigned to ParentCo.
18. For the following reasons, the Monitor submits that the Credit was not validly assigned and that, in any event, it may not be set up against the Monitor by virtue of section 96 of the BIA:
 - a) Wholesale Express was a wholly owned subsidiary of ParentCo and the parties to the Gregor Assignment were clearly not dealing at arm’s length;
 - b) The purported assignment occurred only weeks prior to the filing of the Initial Application and the issuance of the First Day Order. Note that the

Gregor Assignment is dated as of October 24, 2023 and the Initial Application was filed on November 20, 2023;

- c) While the Gregor Assignment states that it is made “for valuable consideration”, it is the Monitor’s understanding that no consideration was paid.

18.1. In the alternative, the Monitor submits that, should this Court conclude that the Gregor Assignment was made for valuable consideration, it may not be set up against the Monitor by virtue of section 95 of the BIA:

- a) it was made in favour of the Former Debtor’s parent company, and thus with a person not dealing at arm’s length;
- b) it falls well within the one year review period; and
- c) it was made while the Former Debtor was clearly and undeniably insolvent. To this day, creditors are owed millions and their prospects of recovery hinge in part on the outcome of this Application.

18.2. In short, whether by virtue of section 95 or 96 of the BIA, the Gregor Assignment may not be set up against the Monitor.

IV. IMPLICATIONS FOR CREDITORS

- 19. Concurrently with the filing of the First Application, the Monitor filed an *Application (i) to Extend the Stay Period and (ii) for a Claims Process Order* in order to determine the validity and quantum of all claims against ResidualCo 2 (i.e. all remaining pre-filing claims against Wholesale Express following the RVO Transactions) (the “Claims Process”).
- 20. While the universe of claims was not known at that time, it had become clear to the Monitor that the funds currently held on behalf of ResidualCo 2 would not suffice to satisfy all claims.
- 21. The order sought herein will allow the Monitor to seek instructions from creditors, possibly in the form of a plan of arrangement, to pursue the Credit and pursue litigation against Gregor.

V. CONCLUSION

- 22. For the reasons set out above, the Monitor submits that it is both necessary and appropriate to (i) declare that the Gregor Assignment is void and may not be set up against the Monitor, and (ii) provide the advice and directions sought herein, namely in the form of the conclusions set out below.
- 23. The present Application is well-founded both in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present Application;

DECLARE that the Assignment of Credit made as of October 24, 2023 between 13517985 Canada Inc. (the “**Former Debtor**”) and the Mise-en-cause, TradeX Group of Companies Inc. (Exhibit R-1), is null and void and may not be set up against the Monitor.

PROVIDE ADVICE AND DIRECTIONS to the Monitor and **DECLARE** that any right or claim held by the Former Debtor against Groupe Grégor Inc., including but not limited to any right or claim in connection with the following agreements dated as of December 17, 2021 (respectively, Exhibits P-4 and P-6 to the *Demande Introductive d’Instance* filed in Québec Superior Court file number 500-1127280-231) is the Property of ResidualCo 2 (as the term Property is defined in the Amended and Restated Initial Order) : (i) the Asset Purchase Agreement between the Former Debtor, Groupe Grégor Inc. and others, and (ii) the Agency Agreement between the Former Debtor and Groupe Grégor Inc.

THE WHOLE without legal costs, except if contested.

Montreal, this September 3, 2024

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SWORN STATEMENT

I, the undersigned, David Malin, having my principal place of business at 600, boul. De Maisonneuve West, Suite 1500, , in the city and district of Montreal, Province of Québec, H3C 0B4, solemnly declare the following:

1. I am a partner at KPMG Inc.; and
2. All the facts alleged in the *Amended Application for (i) Advice and Directions and (ii) To Void a Transfer at Undervalue or, in the alternative (iii) to Void a Preferential Transaction* are, to the best of my knowledge, true.

AND I HAVE SIGNED :


David Malin

Declared under oath before me, by
technological means (Microsoft TEAMS),
in Montreal, September 3, 2024





Commissioner for Oaths for Québec

**NOTICE OF PRESENTATION
COMMERCIAL PRACTICE**

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Amended Application for (i) Advice and Directions and (ii) To Void a Transfer at Undervalue or, in the alternative (iii) to Void a Preferential Transaction* will be presented in the Commercial Practice Division of the Superior Court, **on December 10, 2024** at 9:30 in a room to be determined.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montreal, this September 3, 2024

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C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL**

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(Commercial Division)
*Companies' Creditors Arrangement Act***

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-and-

FTI CONSULTING CANADA INC. in its capacity as receiver and manager of the assets and undertakings of TradeX Groupe of Companies Inc.

Mises-en-cause

LIST OF EXHIBITS

EXHIBIT R-1 : Assignment of Credit made as of October 24, 2023 between 13517985 Canada Inc. (the "**Former Debtor**") and the Mise-en-cause, TradeX Group of Companies Inc.

EXHIBIT R-2 : Exhibits P-1 to P-7.

EXHIBIT R-3 : Case Protocol.

Montreal, this September 3, 2024

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PROVINCE OF QUEBEC
SUPERIOR COURT
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LOCALITY OF MONTRÉAL

IN THE MATTER OF THE COMPANIES
CREDITORS ARRANGEMENT ACT OF:

KPMG INC.

Applicant / Monitor

-and-

13517985 CANADA INC.

Debtor

-and-

HIGHCREST LENDING CORPORATION

Secured Creditor

-and-

THE REGISTRAR FOR THE REGISTER OF
PERSONAL AND MOVABLE REAL RIGHTS
(QUÉBEC)

Mise-en-cause

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**AMENDED APPLICATION FOR (I) ADVICE
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ORIGINAL

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